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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 616

McALLISTER LIGHTERAGE LINE, INC.,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

FILED NOVEMBER 19, 1945.

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

McAllister Lighterage Line, Inc., Petitioner

against

United States of America

and

The Interstate Commerce Commission, Respondents

Petition—Filed September 18, 1944

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of McAllister Lighterage Line, Inc. respectfully alleges:

I. Jurisdiction of this Court is invoked under the provisions of the United States Code, title 49, section 17(9) and title 28, section 41(28) and 43 to 48, inclusive.

II. At all times herein mentioned petitioner, McAllister Lighterage Line, Inc. was and is a corporation organized and existing under the laws of the State of New York, with its principal office at 17 State Street, in the City and State of New York, and was and is a resident of this judicial district.

III. At all times herein mentioned, petitioner was and is a common carrier of goods in interstate commerce by water for hire and an independent tower, furnishing towage services for hire in interstate commerce, with its fleet of tugboats.

[fol. 3] IV. Petitioner hereby sues to enjoin, annul, and set aside an order of the Interstate Commerce Commission (hereinafter referred to as the Commission) dated July 28, 1942, the effective date of which was postponed to May 3, 1944, denying petitioner's application under section 309(a) of Part III of the Interstate Commerce Act (U. S. C., title 49, section 909), hereinafter called the Act, for a certificate to engage in transportation of general commodities by water as a common carrier for hire and render a general towage

service for hire over certain specified routes and between certain ports in interstate commerce.

At the hearing of this action petitioner will submit to the Court a certified transcript of the entire record on which the Commission's order denying the aforesaid application is based, including: petitioner's application for the certificate; the Commission's order of July 28, 1942, denying that application; petitioner's application to re-open the proceeding and request for a hearing; the Commission's order granting that application; the testimony and exhibits introduced at the hearing before the Commission's Examiner; the proposed report of the Commission's Examiners; petitioner's exceptions to that report; the Report of Commissioners Porter, Mahaffie, and Miller, sitting as Division "4", dated February 7, 1944; the Order entered thereon directing that the Commission's Order of July 28, 1942 take effect from and after May 3, 1944; petitioner's application for reconsideration of the aforesaid decision of Division "4", and the Order by the full Commission of April 10, 1944, denying that application. Petitioner respectfully prays that the aforesaid record before the Commission be deemed part [fol. 4] of this complaint as if set out herein at length.

V. Congress, in an Act known as "The Transportation Act of 1940", approved September 18, 1940 (54 Stat. 952), amended the Interstate Commerce Act by adding Part III thereto, directing and empowering the Interstate Commerce Commission to regulate carriers by water in interstate commerce.

Section 309 (a) of Part III provides that no common carrier by water shall engage in transportation, subject to that part without a certificate of public convenience and necessity issued by the Commission. A proviso of this section, commonly referred to as the "grandfather clause," provides for the issuance of such a certificate to an applicant who was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made, if such application is made to the Commission within 120 days after the effective date of that section. The pertinent part of Section 309(a) is as follows:

> Sec. 309(a). Except as otherwise provided in this section and Section 311, no common carrier by water

shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: Provided, however, That, subject to Section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time * * * *except*, * * * *as to interruptions of service over which the Applicant or its predecessor in interest had no control*, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. * * *.

[fol. 5] VI. Within the time required by the "grandfather" clause of Section 309(a) of the Act, petitioner duly filed its aforesaid application, which was designated as Docket No. W-81 on the Commission's records. In this application, as amended in the proceedings before the Commission, petitioner claimed authority under the "grandfather" clause of Section 309(a) to operate as a common carrier of general commodities by water and as a general tower over specified waterways.

VII. Following the denial on July 28, 1942, as aforesaid, of petitioner's application, the Commission, on petitioner's motion, reopened the proceedings for hearing and reconsideration and postponed the effective date of its order.

VIII. The proceeding was thereafter assigned for hearing before Examiner Morris H. Konigsberg of the Commission's staff and a hearing was held before him on September 9, 1943, in New York City. Thereafter, Examiner Konigsberg and Examiner Leonard Way of the Commission's staff filed a proposed report, finding that on and after January 1, 1940, the "grandfather" date, petitioner had engaged only in transportation exempt from regulation under the Act. Examiners Konigsberg and Way accordingly recommended that petitioner's application be denied. Petitioner there-

after duly filed its exceptions to the report proposed by the Examiners.

IX. On February 7, 1944, Commissioners Porter, Mahaffie, and Miller, sitting as Division "4" of the Commission, filed their "Report of the Commission on Reconsideration", in which they affirmed the earlier findings of Division "4" (250 I. C. C. 803) that on January 1, 1940, and thereafter peti- [fol. 6] tioner was not in bona fide operation as a carrier subject to Part III of the Act, and directed that the order of the Commission of July 28, 1942, take effect from and after May 3, 1944.

X. Petitioner thereafter duly filed a petition requesting reconsideration of the decision rendered by Division 4 on February 7, 1944, but on April 10, 1944, an Order was entered at a General Session of the Commission denying that petition.

XI. The Commission found on undisputed evidence (Report of Division "4" dated February 7, 1944):

> Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate setup now consists of McAllister Brothers, Inc., which charters all of its equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs, and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 diesel-powered tugs to be operated by it as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all times applicant has maintained at least one vessel licensed for coastal operations.
>
> Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or

operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933 a freight packet line [fol. 7] was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried.

XII. The undisputed evidence before the Commission established that for many years, including the 2 years immediately prior to 1933, petitioner or its predecessors in interest (hereinafter sometimes jointly referred to as "petitioner") held themselves out as, and were in bona fide operation as, common carriers by water of general commodities and as general towers over the following routes and between the following ports: to and from all ports and points along the eastern seaboard of the United States from Boston, Mass. to Baltimore, Md., including the Chesapeake Bay, the Delaware & Chesapeake Canal, Long Island Sound, the Hudson River to the head of the New York State Barge Canal, New York Harbor, and all ports and points on waterways tributary thereto.

XIII. From 1933 until 1937, as the undisputed evidence revealed, the transportation and towage operations mentioned in the preceding paragraph, which petitioner was willing and able to continue to render, were interrupted by a severe general business depression. The depression brought about a curtailment in traffic during those years so extreme that petitioner's entire fleet, with the exception of 1 or 2 tugs and a few inland scows and lighters, was rendered idle for want of traffic, although petitioner exerted strenuous efforts to obtain employment for its fleet.

XIV. The aforesaid interruption of service from 1933 to 1937, consequent upon the economic depression, was an interruption over which petitioner had no control, within the meaning of Sec. 309 (a) of the Act.

[fol. 8] XV. During 1937 petitioner, as the evidence revealed and as the Commission found, transported machinery, airplanes, guns and parts between various points in New York Harbor, on the Hudson River, and along Long Island Sound. Because of the economic depression, which continued, as the undisputed evidence revealed, throughout 1937, this was the only traffic that petitioner was able to obtain in 1937, other than for transportation within the confines of New York Harbor.

XVI. From 1938 to January 1, 1940, as the undisputed evidence revealed, because of the continuing economic depression, petitioner was unable, though bending every effort to obtain traffic throughout the territory it had served up to 1933, to obtain any traffic in that territory for transportation outside New York Harbor, and petitioner's operations in that period were therefore confined to the New York Harbor area.

XVII. The interruption in petitioner's service from 1938 to January 1, 1940, in the territory outside New York Harbor that petitioner had served up to 1933 was an interruption over which petitioner had no control, within the meaning of Section 309 (a) of the Act.

XVIII. On January 1, 1940, and continuously thereafter, petitioner's entire fleet, as the evidence and as the Commission's findings reveal, has been employed almost exclusively in essential war work within the limits of New York Harbor.

XIX. The employment of petitioner's fleet in New York Harbor, since January 1, 1940, in the performance of essen- [fol. 9] tial war work was an interruption in petitioner's service throughout the territory it had served up to 1933 outside New York Harbor over which petitioner had no control, within the meaning of Section 309 (a) of the Act.

XX. The Commission's Examiners found (proposed Report, Sheet 4):

> Applicant's operations were seriously affected by the economic depression in the period 1930 to 1939; at various times within these years its operations were limited to one or two tugs and a few inland scows and lighters. * * * In the years 1939 to 1942 applicant

transported more than 1,000,000 tons of metals, docked and undocked transoceanic vessels, and was otherwise engaged in war work for the Government within the confines of New York Harbor, and since January 1, 1940, all of applicant's available maritime equipment has been utilized in essential war work.

XXI. The Commission did not set aside the aforesaid findings of its Examiners, and made the following findings and conclusions of its own with respect to petitioner's operations since 1933:

Since 1933 applicant's operations have been confined primarily to the New York Harbor area. Some towing for other carriers and of bulk commodities has been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression, and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309 (a); that at various times during the years of depression its operation was limited to 1 or 2 tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of [fol. 10] section 309(a) an applicant, in order to be entitled to 'grandfather' rights, must show that it was in bona fide operation on January 1, 1940, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and

that it is not holding itself out at the present time to perform such transportation. Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to 'grandfather' rights.

XXII. The Commission erred in failing to find, as the undisputed evidence revealed, that between 1933 and January 1, 1940, the paucity of petitioner's services in the territory it had served up to 1933 was due to a lack of traffic caused by general economic conditions that were wholly beyond petitioner's control, and in failing to conclude that such interruption in service was one over which petitioner had no control, within the meaning of Section 309 (a) of the Act.

XXIII. The Commission erred in finding that on January 1, 1940, and since that date petitioner has not been holding itself out as being willing to perform the transportation and towing services it had performed up to 1933. The undisputed evidence established that on January 1, 1940, and continuously since that date petitioner was and has been willing to perform the transportation and towing services it had rendered up to 1933, but has been prevented from doing so by paramount war-time demands for the employment of its entire fleet in New York Harbor. The Commission erred in failing to conclude that an interruption in petitioner's service caused by the employment of its fleet in essential war work was an interruption over which [fols. 11-12] petitioner had no control, within the meaning of Section 309(a) of the Act.

XXIV. The Commission erred in denying petitioner's application under Section 309(a) of the Act for a certificate to engage in the transportation of general commodities by water as a common carrier for hire, and to render a general towage service for hire over the routes and between the ports specified in paragraph 12 hereof.

XXV. Unless the relief prayed for herein be granted, petitioner's rights will be seriously infringed, and petitioner will sustain irreparable loss and injury in that its fleet of more than 100 vessels, representing property worth more than $1,500,000.00, will be confined to transportation and towage exempt from regulation under the Act.

Wherefore, petitioner prays:

1. That, pursuant to the Urgent Deficiencies Act (U. S. C., title 28, section 47), a court of three judges, one of whom should be a circuit judge, shall be convened to hear this proceeding.

2. That after a hearing, on due notice to respondents, the Court enter an order (a) setting aside and annulling the aforesaid order of the Commission dated July 28, 1942, and (b) directing the Commission to reinstate the proceedings before it and thereupon to issue a proper report, certificate, and order, in accordance with the findings, conclusions, and decree of this court.

3. That petitioner have such other and further relief as may be proper.

Respectfully submitted, Krisel & Beck, by Maurice A. Krisel, a Member of the Firm, Attorneys for Petitioner, Office and Post Office Address, 29 Broadway, New York, N. Y.

[fol. 13] In United States District Court

[Title omitted]

Answer of the United States of America—Filed November 16, 1944

The defendant, United States of America, by its attorney, John F. X. McGoldrick, United States Attorney for the Southern District of New York, for its answer to the petition herein:

1. Admits the allegations of paragraphs I and II of the petition.

2. Denies the allegations of paragraph III except as they are consistent with the findings made by the Interstate

Commerce Commission in its original report of July 28, 1942, a copy of which is attached hereto as Exhibit A, and in which petitioner's application under Section 309(a) of the Interstate Commerce Act for a certificate of convenience and necessity was denied, or in the Commission's report on reconsideration of the same application, dated February 7, 1944, a copy of which is attached hereto as Exhibit B.

3. Denies that the present suit is brought to enjoin the Commission's original report and order of July 28, 1942, as alleged in paragraph IV, but alleges that inasmuch as the Commission reconsidered that report and order in its report of February 7, 1944, and as a result of such report on reconsideration issued an order of the same date directing that the original order of July 28, 1942 should become effective on May 3, 1944, the present suit must be considered as a suit only to enjoin the Commission's action on reconsideration as indicated in its report and order of February 7, 1944. [fol. 14] For further answer alleges that it has no objection to petitioner's introducing at the hearing before this Court in the present case, the record in the proceedings before the Interstate Commerce Commission and the other matters referred to in said paragraph IV.

4. Admits the allegations of paragraph V of the petition. For more full and complete information concerning the provisions of this statute the Court is respectfully referred to said Part III of the Interstate Commerce Act (49 U. S. C. 901, et seq.).

5. Admits the allegations of paragraph VI but refers the Court to the Commission's reports in this case for a more complete statement concerning the operating authority sought than is contained in said paragraph.

6. Admits the allegations of paragraphs VII and VIII of the petition.

7. Admits the allegations of paragraph IX of the petition but refers the Court to the Commission's report on reconsideration in the present case for a more complete statement concerning the matters referred to in this paragraph than is contained therein.

8. Admits the allegations of paragraph X of the petition.

9. Admits the allegations of paragraph XI but refers the Court to the Commission's report on reconsideration

for a more complete statement concerning the matters referred to in that paragraph than is contained therein.

10. Denies the allegations of paragraphs XII and XIII of the petition except as they are consistent with the findings made by the Commission in its report on reconsideration in the present case.

11. Denies that the interruption of service from 1933 to 1937 referred to in paragraph XIV was an interruption over which petitioner had no control, and for further answer alleges that under the "grandfather" clause of Part III of the Interstate Commerce Act the Commission is only to be concerned with the operations on and after January 1, 1940, [fol. 15] and is not to be concerned with whether operations conducted prior to that time were interrupted for reasons over which the petitioner had no control.

12. Denies the allegations of paragraphs XV and XVI of the petition except as such allegations are consistent with the findings made by the Commission in its report on reconsideration in the present case.

13. In answer to the allegations of paragraph XVII, denies that the interruption in petitioner's service from 1938 to January 1, 1940 was an interruption over which petitioner had no control, and for further answer alleges that under the "grandfather" clause of Part III of the Interstate Commerce Act the Commission is only to be concerned with the operations on and after January 1, 1940, and is not to be concerned with whether operations conducted prior to that time were interrupted for reasons over which the petitioner had no control.

14. In answer to paragraph XVIII, admits the allegations thereof to the extent that they are consistent with the Commission's findings in its report on reconsideration in the present case.

15. In answer to paragraph XIX of the petition, denies that the employment of petitioner's fleet in operations in New York Harbor since January 1, 1940 was an interruption of petitioner's service or that it was in any event an interruption over which petitioner had no control. For further answer alleges that such operations conducted by petitioner on and after January 1, 1940 were exempt from regulation

under the Interstate Commerce Act under Section 303(g) of said Act and under the Commission's order in *Ex Parte No. 140*, a copy of which is attached to the answer of the Interstate Commerce Commission as Exhibit A. For further answer alleges that since petitioner was engaged only in such exempt operations on and after January 1, 1940, the Commission properly found that it was not on and after that date engaged in bona fide operations as a common carrier by water subject to the Interstate Commerce Act.

[fol. 16] 16. Admits that the Commission's examiners issued a proposed report, as alleged in paragraph XX of the petition, a portion of which is quoted in said paragraph.

17. In answer to paragraph XXI, admits that the Commission in its report of February 7, 1944 used the language set forth in said paragraph but refers the Court to the Commission's report for a more complete statement concerning the matters mentioned in said paragraph than is contained in that paragraph.

18. Denies the allegations of paragraphs XXII, XXIII and XXIV of the petition.

19. In answer to paragraph XXV of the petition, alleges that it has no knowledge as to the allegations thereof and therefore neither admits nor denies the same except that it admits that the petitioner will sustain such an injury from the Commission's order as to authorize it to bring the present suit.

Wherefore, the defendant, United States of America, demands judgment dismissing the complaint.

Dated: New York, N. Y., November 13, 1944.

John F. X. McGohey, United States Attorney for the Southern District of New York, by William L. Lynch, Assistant United States Attorney, Attorney for Defendant, United States of America. Office and Post Office Address: United States Court House, Foley Square, New York, N. Y.

Of Counsel: Wendell Berge, Assistant Attorney General; Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

[fol. 17] EXHIBIT "A" TO ANSWER

This report will not be printed in full in the permanent series of Interstate Commerce Commission Reports.

INTERSTATE COMMERCE COMMISSION

No. W-81 [1]

McALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

Submitted May 1, 1942. Decided July 28, 1942

1. McAllister Lighterage Line, Inc. found not to have been in operation on January 1, 1940, in the performance of transportation subject to part III of the act. Application denied.

2. McAllister Brothers, Inc. found not to have been in operation on January 1, 1940, as a common or contract carrier by water. Application dismissed.

Dow, McAllister & Symmers for applicants.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

By application filed May 29, 1941, McAllister Brothers, Inc. and McAllister Lighterage Line, Inc. seeks permits under section 309(f) of part III of the Interstate Commerce Act authorizing continuance of operation as a contract carrier by water, in interstate or foreign commerce, in the transportation of commodities generally between ports and points in New York and New Jersey.

Applicants are under common control and ownership, and for this reason we will consider their applications in one report. Under the above section they are entitled to permits upon a showing that they were in bona fide operation on January 1, 1940, in the performance of transportation sub-

[1] This report embraces Docket No. W-217, *McAllister Brothers, Inc. Contract Carrier Application.*

ject to part III of the act, and have so operated since that time.

On January 1, 1940, and since that time McAllister Lighterage Line, Inc. has been engaged in general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto.* Applicant's services within this area have consisted of (1) transportation of various commodities for shippers and consignees, (2) the docking and undocking of vessels for other carriers, and (3) the furnishing of vessels under bare boat charters at per diem rates to the Pennsylvania Railroad Company.

The transportation performed for shippers and consignees between points within the above-mentioned harbor area is exempted by section 303(g)(1) of the act because it is not performed under common control, management, [fol. 18] or arrangement with other carriers for continuous through movement to or from a place beyond the limits of the area. The towage performed for other carriers in the docking and undocking of vessels is incidental to the transportation by those carriers, and applicant's operation is exempt under section 303(f)(2) to the extent that such transportation is subject to the act. In the furnishing of vessels under bare boat charters to the railroad, applicant is not a common or contract carrier as defined in sections 302(d) and (e) of the act.

In 1939 applicant towed two derricks and a crane to and from points outside the above-mentioned harbor area. During that year, and since, applicant engaged in no other transportation to or from points outside the harbor area, except for the movement of 213 tons of steel piling from the Claremont, N. J., railroad terminal to Fire Island, N. Y., in November 1940. In April 1942 applicant towed derrick barges and salvors' equipment for a company engaged in salvage operations.

The towage of the derricks and crane have been exempted from the requirements of part III of the act by our order of October 29, 1941, in Ex Parte No. 147, *Towage of Floating Objects.* Towage for persons engaged in salvage operations would be incidental to their operations, and applicant's service in connection with such operation is exempted by section 303(g)(2). Therefore, the only transportation

performed by applicant which would be subject to regulation under part III of the act has occurred since January 1, 1940. Applicant must show that it has been engaged in non-exempt operations on and before January 1, 1940, as well as since that date, in order to be entitled to a permit. Under these circumstances we must deny the request for authority to operate to and from points outside the harbor area defined in our order in Ex Parte No. 140.

McAllister Brothers, Inc. owns 50 vessels but is not an operating company. For many years prior to January 1, 1940, and since that time, its sole business has been the chartering of its vessels to McAllister Lighterage Line, Inc. In such chartering of its vessels McAllister Brothers, Inc. is not engaged in transportation as a common or contract carrier as defined in sections 302(d) and (e) of the act, and it needs no certificate or permit authorizing continuance of its business. For this reason we will dismiss the application.

We find that McAllister Lighterage Line, Inc. was not in operation on January 1, 1940, and continuously since as a contract or common carrier by water, in interstate or foreign commerce, in the performance of transportation subject to part III of the act. The application in W-81 will be denied.

We further find that on January 1, 1940, and since that date McAllister Brothers, Inc. has not been engaged in the operations as a common or contract carrier by water. The application in W-217 will be dismissed.

An appropriate order will be entered.

[fol. 19] ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, Held at Its Office in Washington, D. C., on the 28th Day of July, A. D. 1942

No. W-81

MCALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

MCALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

McAllister Lighterage Line, Inc. and McAllister Brothers, Inc. having filed applications under the provisions of section 309(f) of the Interstate Commerce Act for permits authorizing continuance of operations as contract carriers by water, a full investigation of the matters and things involved having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the application of McAllister Lighterage Line, Inc. be, and it is hereby, denied.

It is further ordered, That the application of McAllister Brothers, Inc. be, and it is hereby, dismissed.

And it is further ordered, That this order shall take effect and be in force from and after September 7, 1942.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fol. 20] EXHIBIT "B" TO ANSWER

This report will not be printed in full in the permanent series of Interstate Commerce Commission Reports.

INTERSTATE COMMERCE COMMISSION

No. W-81 [1]

McALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

Submitted December 15, 1943. Decided February 7, 1944

Upon reconsideration, findings in prior report, 250 I. C. C. 803, not printed, affirmed; and McAllister Lighterage Line, Inc., found not to have established that public convenience and necessity requires operation by it. Order issued permitting the order issued on July 28, 1942, to become effective.

Appearances as in prior report, and Maurice A. Krisel for applicants.

A. M. Gould, William M. Smith, and A. R. Eldred for interveners in opposition to the application.

REPORT OF THE COMMISSION ON RECONSIDERATION

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

Exceptions were filed by applicant in Docket No. W-81 to the report proposed by the examiners.

In the prior report, 250 I. C. C. 803, not printed, we found, among other things, that the McAllister Lighterage Line, Inc., applicant in Docket No. W-81, and McAllister Brothers, Inc., applicant in Docket No. W-217, were not in operation on January 1, 1940, and continuously since, as contract or common carriers by water, in interstate or foreign commerce, in the performance of transportation

[1] This report also embraces Docket No. W-217, McAllister Brothers, Inc. Contract Carrier application.

subject to part III of the Interstate Commerce Act. The application in Docket No. W-81 was denied and that in Docket No. W-217 was dismissed. Upon petition of applicants, the proceedings were reopened for hearing and reconsideration. The order denying and dismissing the applications was postponed until our further order. The application in Docket No. W-217 was withdrawn.

[fol. 21] By application filed May 29, 1941, McAllister Lighterage Line, Inc., sought a permit under the provisions of section 309 (f) of part III of the act authorizing continuance of the operation in which it was engaged on January 1, 1940, and since, as a contract carrier by water, in interstate and foreign commerce, in the transportation of commodities generally, between ports and points in New York and New Jersey. The application was in the alternative and requested a certificate if we found applicant to be a common carrier. At the hearing applicant requested that this application be amended by eliminating the request for permit as a contract carrier, and substituting therefor a request for a certificate to continue operation as a common carrier under the "grandfather" provisions of section 309(a), and, in the alternative, for a certificate as a common carrier under the public convenience and necessity provisions of section 309 (e) from, to, and between all ports from Eastport, Maine, to North Carolina, inclusive, over coastwise ocean routes and inland waterways, including Long Island Sound, Hudson River, Delaware and Chesapeake Canal, Delaware Bay, and intercoastal waterway, by tug, barge, and general towage. The amendment was objected to on the ground that it is broader in scope than the original application and that notice of the amendment has not been served on the States or other interested parties. In view of the findings hereinafter made the issue is not pertinent.

In the prior report we said:

> On January 1, 1940, and since that time McAllister Lighterage Line, Inc. has been engaged in general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous thereto.* Applicant's services within this area have consisted of

(1) transportation of various commodities for shippers and consignees, (2) the docking and undocking of vessels for other carriers, and (3) the furnishing of vessels under bare boat charters at per diem rates to the Pennsylvania Railroad Company.

The transportation performed for shippers and consignees between points within the above-mentioned harbor area is exempted by section 303 (g) (1) of the act because it is not performed under common control, management, or arrangement with other carriers for continuous through movement to or from a place beyond the limits of the area. The towage performed for other carriers in docking and undocking of vessels is incidental to the transportation by those carriers, and applicant's operation is exempt under section 303 (f) (2) to the extent that such transportation is subject to the act. In the furnishing of vessels under bare boat charters to the railroad, applicant is not a common or contract carrier as defined in sections 302 (d) and (e) of the act.

In 1939 applicant towed 2 derricks and a crane from and to points outside the above-mentioned harbor area. During that year, and since, applicant engaged in no other transportation to or from points outside the harbor area, except for the movement of 213 tons [fol. 22] of steel piling from the Claremont, N. J., railroad terminal to Fire Island, N. Y., in November, 1940. In April, 1942, applicant towed derrick barges and salvors' equipment for a company engaged in salvage operations.

The towage of the derricks and crane have been exempted from the requirements of part III of the act by our order of October 29, 1941, in Ex Parte No. 147, *Towage of Floating Objects*. Towage for persons engaged in salvage operations would be incidental to their operations, and applicant's service in connection with such operations is exempted by section 303 (g) (2). Therefore, the only transportation performed by applicant which would be subject to regulation under part III of the act has occurred since January 1, 1940. Applicant must show that it has engaged in non-exempt operations on and before January 1, 1940, as well as since that date, in order to be entitled to a permit.

Under these circumstances we must deny the request for authority to operate to and from points outside the harbor area as defined in our order in Ex Parte No. 140.

Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate set-up now consists of McAllister Brothers, Inc., which charters all of its equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs, and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 diesel-powered tugs to be operated by it as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all times applicant has maintained at least one vessel licensed for coastal operations.

Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933 a freight packet line was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried.

Since 1933 applicant's operations have been confined primarily to the New York Harbor area. Some towing for other carriers and of bulk commodities has been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, air-

planes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, ap- [fol. 23] plicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression, and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309 (a); that at various times during the years of depression its operation was limited to 1 and 2 tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of section 309 (a) an applicant, in order to be entitled to "grandfather" rights, must show that it was in bona fide operation on January 1, 1940, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to "grandfather" rights.

With respect to the alternate request for a certificate under the public convenience and necessity provisions of the act, a representative of the American Metal Company testified on behalf of applicant. This concern ships metal products and by-products to destinations beyond the New York Harbor by common carrier other than applicant and it would be practicable or desirable to this company to have another carrier available so as to avoid delays due to lack of equipment. A broker engaged in arranging for transportation of goods for shippers' account by tug and barge,

also supported the application. A substantial portion of 3,000,000 tons of commodities move by barge between points in Maine and all Atlantic and Gulf ports, Cuba and West Indies. The movement of most of the commodities, such as fertilizers, coal, potatoes, and other commodities is seasonal and at times there is a shortage of floating equipment and some of applicant's equipment could be used at present if available. A representative of this broker believes that some of applicant's equipment could be used in this trade after the war if traffic assumes the proportions of 1927 and 1928. No definite offer of any part of this traffic has been made to applicant and it has no available equipment for use outside of the New York Harbor at the present time. What the situation will be when conditions become normal is speculative.

Upon reconsideration, the findings in the prior report that applicants were not in bona fide operation on January 1, 1940, and since, as carriers subject to part III, are affirmed; and we further find that McAllister Lighterage Line, Inc., has failed to establish that public convenience and necessity requires operation by it on the Atlantic, coastal and inland waterways.

An order will be issued permitting the order issued on July 28, 1942, to become effective.

[fol. 24] [File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed November 9, 1944

The Interstate Commerce Commission, one of the defendants in the above-entitled case, for answer to the petition, answers and says:

I

Answering the allegations of paragraphs I and II of the petition, the Commission, for the purposes of this suit, admits the truth of the allegations contained therein.

II

Answering the allegations of parapraph III of the petition, the Commission denies the allegations thereof, and respectfully refers the court to its original report of July 28, 1942, and its report on reconsideration dated February 7, 1944, for full information concerning its findings as to the services rendered by petitioner.

[fol. 26]

III

Answering the allegations of paragraph IV of the petition, the Commission alleges that in addition to the report of July 28, 1942, referred to in the opening subparagraph of said paragraph IV, it issued a report on reconsideration, dated February 7, 1944, and it is the later report on reconsideration of February 7, 1944 which is the subject of this suit.

Answering the allegations of the second subparagraph of paragraph IV of the petition, the Commission alleges that the entire record on which its report of July 28, 1942, and its report and order of February 7, 1944, now under attack, are based, should be before the court on the final hearing in this cause, in order that the court may have before it the same record that the Commission had before it in rendering its said reports and order.

IV

Answering the allegations of paragraph V of the petition, the Commission admits that by the Transportation Act of 1940 certain duties were imposed upon it with respect to the regulation of water carriers in interstate commerce. For more full and complete information concerning the requirements of this statute the Commission respectfully refers the court to Part III of the Interstate Commerce Act.

Further answering the allegations of this paragraph and acting within the authority conferred upon it by said Transportation Act of 1940, the Commission alleges that on March 26, 1941, it issued an order in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Har-*

[fol. 27] *bors Contiguous Thereto*, and that on November 16, 1942, it issued a report in Ex Parte No. 147, *Towage of Floating Objects*, which are hereby referred to and made parts of this answer as Exhibits A and B.

V

Answering the allegations of paragraph VI of the petition, the Commission admits that an application pursuant to the provisions of Section 309a of the Act was filed by petitioner with the Commission, designated Docket No. W-81, in which the petitioner claimed certain authority more specifically set out in the Commission's reports of July 28, 1942 and February 7, 1944.

VI

Answering the allegations of paragraphs VII and VIII of the petition, the Commission admits the same.

VII

Answering the allegations of paragraph IX of the petition, the Commission admits the issuance of the report of February 7, 1944, therein referred to, but for more full and complete information concerning the contents of said report and order of February 7, 1944, the Commission respectfully refers the court to said report.

VIII

Answering the allegations of paragraph X of the petition, the Commission admits the same.

IX

Answering the allegations of paragraph XI of the petition, the Commission admits that in its report of February [fol. 28] 7, 1944, it made the statements contained in said paragraph, but for more full and complete information concerning its findings, it refers to said report of February 7, 1944 in its entirety.

X

Answering the allegations of paragraph XII of the petition, the Commission denies the same.

XI

Answering the allegations of paragraph XIII of the petition, the Commission refers the court to its report and order of February 7, 1944, for complete answer to the allegations of this paragraph.

XII

Answering the allegations of paragraph XIV of the petition, the Commission denies the same.

XIII

Answering the allegations of paragraph XV of the petition, the Commission refers the court to its report of February 7, 1944, for more full and complete information as to its findings than is contained in said paragraph XV.

XIV

Answering the allegations of paragraph XVI of the petition, the Commission refers the court to its report of February 7, 1944, for complete answer thereto.

[fol. 29]

XV

Answering the allegations of paragraph XVII of the petition, the Commission denies the same.

XVI

Answering the allegations of paragraph XVIII of the petition, the Commission refers the court to its report of February 7, 1944, for a complete answer thereto.

XVII

Answering the allegations of paragraph XIX of the petition, the Commission denies the same.

XVIII

Answering the allegations of paragraphs XX and XXI of the petition, the Commission admits that its examiners issued a proposed report, a portion of which is quoted in paragraph XX of the petition, but the Commission alleges that the recommendations of its examiners did not take away from it the responsibility of decision and the requirement that it reach its own conclusions upon the evidence.

The Commission further admits that in its report of February 7, 1944, it used the language set forth in paragraph XXI of the petition, but for more complete information concerning the contents of said report, it respectfully refers the court to its entire report of that date.

XIX

Answering the allegations of paragraphs XXII, XXIII and XXIV of the petition, the Commission denies the same.

[fol. 30]

XX

Answering the allegations of paragraph XXV of the petition, the Commission denies that petitioner will sustain irreparable loss and injury if its order under attack herein is not set aside.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the petition, insofar as they conflict with either the statements of fact or conclusions included in its reports of July 28, 1942 and February 7, 1944, hereinbefore referred to.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission by E. M. Reidy, Assistant Chief Counsel. John F. X. McGohey, United States Attorney, by William L. Lynch. Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 31] *Duly sworn to by Claude R. Porter. Jurat omitted in printing.*

[fol. 32] EXHIBIT "A" TO ANSWER

ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 26th day of March, A. D., 1941.

Ex Parte No. 140

DETERMINATION OF THE LIMITS OF NEW YORK HARBOR AND HARBORS CONTIGUOUS THERETO

It appearing, That it is necessary for the proper administration, execution, and enforcement of the Interstate Commerce Act, Part III, that a determination be made of the limits of the Harbor of New York, N. Y., and any and all harbors contiguous thereto within the meaning of Section 303 (g) of the said Act.

It is ordered, That for the purpose of administration and enforcement of the Interstate Commerce Act, Part III, the

Harbor of New York, N. Y., and harbors contiguous thereto, within which transportation in interstate commerce by water, when such transportation is not a part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, will be exempt from regulation pursuant to Section 303 (g) of said Act, be, and they are hereby defined to include the following:

The waters within the area over which the Port of New York Authority now has jurisdiction as shown in the appendix to this order, which appendix is hereby referred to and made a part hereof.

It is further ordered, That all common and contract carriers by water engaged in transportation of persons or property in interstate commerce, as defined by said Part III, within the general territory affected by this order so far as they are known to this Commission, the Port of New York Authority, the New York Public Service Commission, the New Jersey Board of Public Utilities Commissioners, the Association of American Railroads, American Short Line Railroad Association, and the American Trucking Associations, Inc., be notified of this proceeding by mailing to each a copy of this order.

And it is further ordered, That this order shall become effective thirty days from the date hereof, unless good cause is shown for further proceedings herein, and shall continue in effect until the further order of this Commission.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fol. 33] EXHIBIT "B" TO ANSWER

WC-111

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 147

TOWAGE OF FLOATING OBJECTS (LOGS AND PILING IN RAFTS)

Submitted September 1, 1942. Decided November 16, 1942

Transportation of logs and piling in rafts found not subject to exemption under section 303 (e), because there is nothing in their inherent nature which makes the transportation by water carriers noncompetitive with the transportation of the same commodities by common carriers subject to part I, II, or III, no special equipment is required to transport logs and piling in rafts, and logs and piling in rafts are not shipped in bulk within the meaning of the statute. Order in this proceeding dated October 29, 1941, as amended, modified.

Thomas J. White for petitioners.
John H. Kelley opposing the petition.
Earl S. Nelson, John J. Seid, Gus Carlson, and Donald E. Leland for interveners.
John H. Carkin for Public Utility Commission of Oregon.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

Under the provisions of section 303 (e) of part III of the Interstate Commerce Act, we on October 29, 1941, entered an order in this proceeding, finding that numerous carriers by water are engaged in the towing of empty vessels to and from shipyards, of floating objects such as logs and piling in rafts, and of derricks, dredges, tanks, caissons, pontoons, and other floating objects of varying shapes, sizes, and drafts which are not designed or used for the carrying of passengers and property; that, because of the inherent nature of the commodities transported, or their requirement of special equipment, such transportation is not actually and substantially competitive with tranportation by any

common carrier subject to part I, II, or III of the act; and that carriers engaged in such transportation under individual agreements or contracts are contract carriers by water, and we exempted the transportation of such floating objects by contract carriers from the requirements of part III of the act until the further order of the Commission.

Upon petition filed by water carriers operating in the Columbia River area on the northwest Pacific coast, as [fol. 34] named in the footnote 1,[1] seeking reconsideration and postponement of the above-mentioned order insofar as it relates to the exemption of the transportation of logs and piling in rafts, we entered a supplemental order dated December 3, 1941, suspending the effectiveness of the original order, to the extent requested by petitioners, until the further order of the Commission. A hearing has been held and briefs have been filed.

It is petitioners' position that they do not come within the provisions of section 303 (e), principally because (1) no special equipment is used in towing logs and piling, and (2) there is actual and substantial competition with other transportation by carriers subject to part I, II, or III of the act. Tey ask that the order exempting them from the requirements of part III be vacated. Representatives of the Mirene Company and Leach Tug & Towboat Company, water carriers operating in the lower Columbia River area, presented testimony in opposition to the petition. The Northwest Towboat Association, of Seattle, Wash., was also represented, but offered no evidence. Our order of October 29, 1941, was served on all known water carriers, including steamship, steamboat, barge, navigation, lighterage, tow-

[1] Arrow Tug & Barge Company, Albert Bernert, Carl Bernert, Joe Bernert, Diesel Towing Company, Jones Towboat Company, Longview Tugboat Company, Portland Tug & Barge Company, Ramona Towboat Company, Russell Towboat Company, Shaver Forwarding Company, Shaver Transportation Company, Shepard Towing Company, C. T. Smith & Company, Wilbur J. Smith, and Westport Towboat Company. The petition also includes the Columbia Tugboat Company and Luke Nichols as petitioners. The former withdrew as a petitioner by letter dated May 12, 1942, and the business of the latter has been merged with the Russell Towboat Company.

ing, and forwarding companies, as well as upon wharf, terminal, and stevedore companies, and in addition it was served upon concerns known to have transported their own commodities or materials in their own vessels, such as coal, lumber, oil, sand, and gravel, and on sulphur companies and marine contractors. Notwithstanding such service, and wide publicity, that order has not been directly assailed except by the instant petition. From this, we assume that generally there is no concern about our order except by those engaged in the transportation of logs and piling in rafts in substantial quantities on the Columbia River, Puget Sound, and the northwest Pacific coast areas.

Approximately 30 water carriers, including petitioners, are actively engaged in towing logs and piling in rafts on the lower Columbia and Willamette Rivers and their tributaries, having an aggregate of about 147 towboats in service. Some of these carriers have been engaged in towing for 2 years; 1 has been towing logs about 50 years. A number of these carriers have been found by us to be common carriers subject to part III. Towing of logs constitutes the major part of their operations. Twenty-nine of these carriers are shown as participating in Columbia River Tariff Bureau tariff I. C. C. No. 1, on file with us. This [fol. 35] tariff names rates for the towage of logs, piling, and boomsticks [2] between all shipping and receiving points on these rivers.

The State of Oregon produced more than 5 billion board feet of lumber in 1940, and the State of Washington produced more than 4.5 billion feet. Of this production, more than 1.5 billion feet were produced in the lower Columbia River district. The principal lumber mills are located at Portland, Oreg., and Longview, Wash. Other mills are at Astoria, Oreg., Vancouver, Wash., and other points along the Columbia and Willamette Rivers.

Most of the logs are cut from forests in the Columbia River basin. The importance of the log movement from its origin to the mills by water carriers is indicated by

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[2] Boomsticks are logs anywhere from 15 to 22 inches in diameter at either end, and ranging up to 65 feet in length. They form the outsides of a log raft, keeping the logs in place for towing purposes. The ordinary log raft has 12 boomsticks on each side.

the volume transported. *In 1941, one water carriers is indicated by the volume transported. In 1941, one of two other companies was 639,000,000 feet.* One carrier with three tugboats towed 9,000,000 feet. There is a large movement of logs through the Oregon City locks on the Willamette, south of Portland, and through the Bonneville locks on the lower Columbia, east of Portland. In 1941, 419,000,000 feet of logs moved through the Oregon City locks. The amount that moved through the Bonneville locks is not shown. The average Columbia River raft will contain about 350,000 feet of logs.

Public highways and railroads parallel the Columbia and Willamette Rivers and some of their tributaries, thus affording additional means of transportation, but in most instances the cutting of the timber has moved farther and farther from the rivers, highways, and rails, and it is now necessary to haul the logs to railheads or truck-loading points where facilities are established. The method of transportation depends largely upon where the logs are cut, the loading facilities, and the cost of transportation by the different agencies. For the most part, the logs are trucked from the forest where cut to railheads where they are loaded on flat cars and moved by rail to so-called log "booms" and dumped into a river or bay for further transportation by water. Sometimes, the logs are hauled all the way from the forest to the log "boom" by motortrucks. After being dumped at the "boom," the logs are made up into rafts, as later described, either by the logging company or by an agency in behalf of the sawmill or consignee at destination. From the "boom," the log rafts are towed either to sawmills at Portland, Longview, or other points on the Columbia or Willamette, or, if the logs are destined to mills in the Puget Sound area of the State of Washington, they are usually towed to Vancouver where the logs [fol. 36] are taken out of the raft and loaded on railroad cars for movement thence by rail north to destination. Occasionally the logs move through by rail from the previously mentioned railhead to destination, which, in most instances, would be either Portland or mills in the Puget Sound area. Thus it will be seen there are three competing agencies seeking the transportation of these logs, viz., motortrucks, railroads, and water carriers, but, as already explained, the bulk of the traffic moves over a combination truck-rail water route.

In the Pacific Northwest, there are three different methods of constructing log rafts, which will be explained in the order of their importance. (1) In making the average Columbia River rafts, which are the most numerous, it is the practice to use 12 boomsticks (described in footnote 2) along each side of the raft, and one is placed crosswise at the stern. The boomsticks are fastened together, end to end, by 7/8-inch or 1-inch boomchains from 5 to 7 feet in length, the bow of the raft being pointed for ease in towing, and the stern boomstick (called a "header") is placed crosswise to head the logs in. After the logs are placed within the boomsticks, so-called "swifters" are spread across the raft from the right-hand to the left-hand boomsticks, and fastened for the purpose of keeping the raft from spreading, and to maintain the general shape of an ordinary boat. These "swifters" are made with either rope, wire, or cables. (2) Rafts made in the upper Willamette River, above Oregon City, are shorter and narrower than the Columbia River raft just described, because of the length and width of the locks through which they must pass. They are called "brails" or "lockages" and are of the same general shape, but must be fastened together with "dog lines" which are made of plow-steel cable, about 105 feet in length. In fastening the "dog lines" on a "brail" raft, steel dogs mounted on the line are driven into the logs. After these small-sized rafts have passed through the locks on the upper Willamette, and have reached Oregon City, they are broken up, the logs being rerafted into an average Columbia River raft, and the "dog lines" are shipped back to the log "boom" at which the logs originated. (3) The third type of raft is called a "Davis" raft, being made in the shape of a large cigar. These "Davis" rafts are very large and rugged, enabling towing by seagoing tugs on the high seas between the Columbia River area and Grays Harbor, Wash., the Puget Sound area, or other points on the Pacific Ocean.

With respect to the equipment used in making and towing log rafts, petitioners admit that, while they carry a supply of boomsticks, boomchains, swifters, and dog lines, these articles are not considered part of the towboat equipment, and state that, when furnished, they are considered an additional service for which an extra charge is made. Protestants seem to consider these articles as "special equip-

[fol. 37] ment" within the meaning of section 303 (e) of the act, but, from a study of the record, we do not construe the evidence in this manner. It is observed that the total cost of this equipment would be about $275, and that the articles are used over and over again. According to petitioners, the only equipment that a towboat must furnish is emergency cables, and in this respect they are not unlike the usual towboats.

The service of the water carrier is that of towing rafts from and to designated points on the rivers, and the towing of boomsticks to the origins of the rafts, a special charge being made for the latter service. The equipment used in such service consists of self-propelled tugs or towboats with engines or motors ranging up to 900 horsepower, with towing winches, safety equipment, and towing cable. These items are designated by petitioners as "tools of the trade." We conclude that the boats and equipment are not "special equipment" within the meaning of section 303 (e) of the act.

In addition, some of the water carriers either own or lease storage space on the rivers for mooring and storage of log rafts. These mooring places are made by driving several "dolphins" (consisting of from 4 to 9 piles) in the bed of the river, in open reaches of water to which the rafts may be moored. Generally these mooring spaces are used for the convenience of the water carriers, but are also used as storage facilities when the sawmills are oversupplied with logs, and in that event are of convenience to the latter. The tariff previously referred to provides 15 days' free storage and a charge thereafter. Protestants contend that possession of these storage spaces, which they allege are owned by the larger towing companies, operates to the disadvantage of the protesting smaller water carriers who do not have storage facilities. It is not within our province to attempt to equalize advantages of location and facilities.

Under section 303 (e), we are authorized to exempt transportation which, by reason of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk, is not actually and substantially competitive with the transportation by any common carrier subject to part I, II, or III of the act. The transportation of logs and piling cannot be non-

competitive with transportation by common carriers subject to part I, II, or III of the act because of the inherent nature of those commodities. Logs and piling have been transported for years by common carriers by railroad, motor vehicle, and water. The evidence in this proceeding shows that no special equipment is needed to tow logs and piling in rafts, but merely the customary equipment of all tugboats. Logs and piling are not bulk commodities and are not shipped in bulk within the meaning of the statute. See *Mulqueen Contract Carrier Application*, 250 I. C. C. 436. It is unnecessary to decide whether the carriers engaged in this type of transportation are common or contract carriers. We will leave that question for determination when passing upon the individual applications of such operators.

[fol. 38]

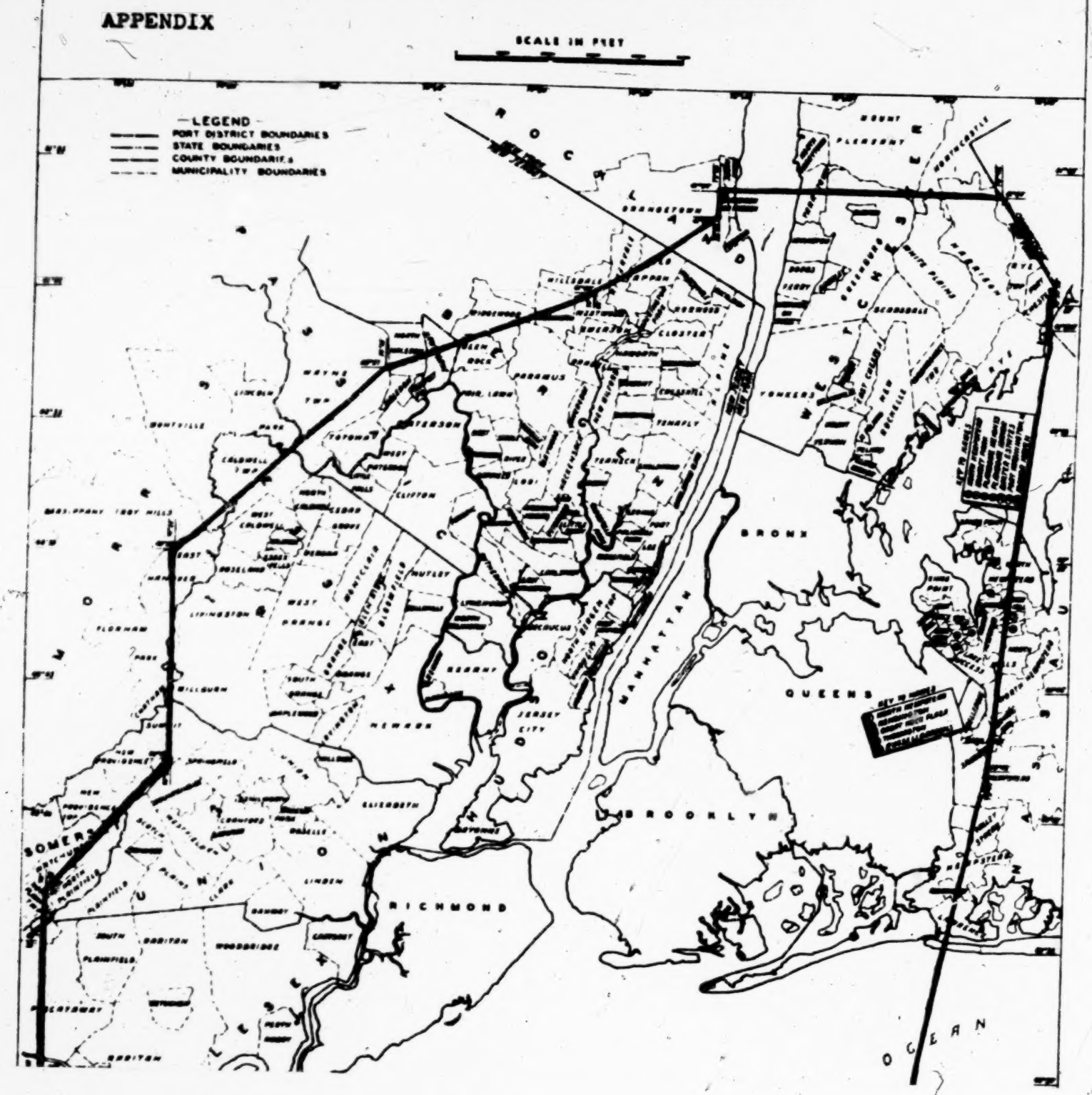
We find that the transportation of logs and piling in rafts is not subject to exemption under section 303 (e) because (1) there is nothing in the inherent nature of logs and piling which makes the transportation by water carriers noncompetitive with the transportation of the same commodities by common carriers subject to part I, II, or III, (2) no special equipment is required to transport logs and piling in rafts, and (3) logs and piling in rafts are not shipped in bulk within the meaning of the statute. The order heretofore entered in this proceeding on October 29, 1941, as amended December 3, 1941, exempting as contract carriers those who are engaged in the transportation of logs and piling in rafts, should be vacated and set aside insofar as it refers to the traffic described in this report.

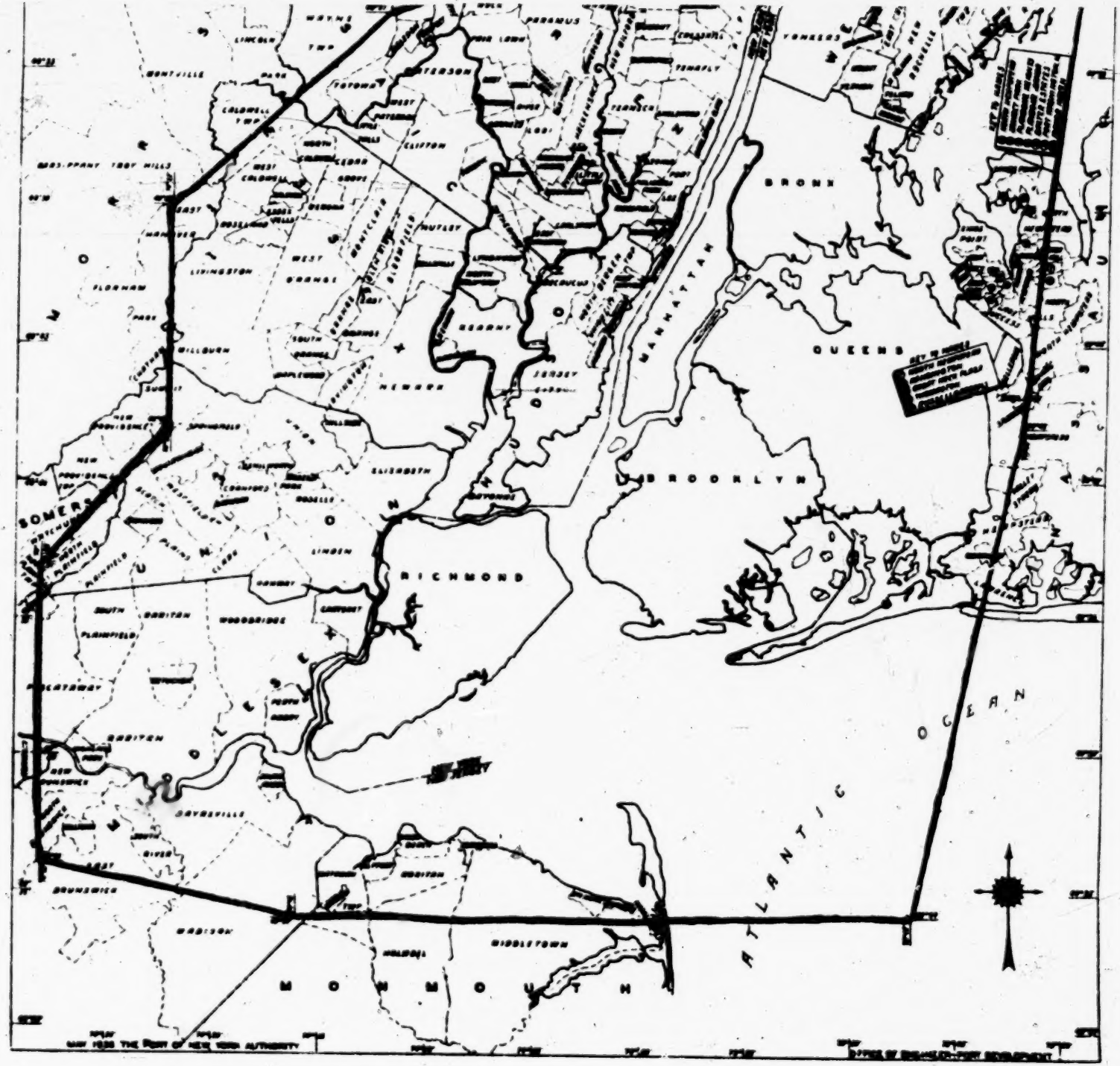
An appropriate supplemental order will be entered.

(Here follows one photolithograph, side folio 39)

THE PORT OF NEW YORK AUTHORITY

APPENDIX




BRONX
QUEENS
BROOKLYN
RICHMOND
MANHATTAN
SOMERS
MONMOUTH
ATLANTIC OCEAN

[fol. 40] [File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING JUDGES AND FIXING TIME OF HEARING—

Filed February 1, 1945

It appearing from the petition herein that this suit is brought to suspend, set aside and annul a certain order of the Interstate Commerce Commission and for other specified relief, and the answers of the United States of America and of the Interstate Commerce Commission having been served,

Now, on motion of Krisel & Beck, attorneys for petitioner and pursuant to the Urgent Deficiencies Act 38 Stat. 220, Title 28 U. S. C. Section 47, it is

Ordered that the issues in this suit and any *ad interim* application subject to the provisions of said Urgent Deficiencies Act shall be heard and determined by Hon. Alfred C. Coxe, the undersigned District Judge, together with Hon. Harrie B. Chase and John W. Clancy, the latter two judges having been called to the assistance of the undersigned District Judge in accordance with said Statute, and it is further,

Ordered, that the issues of this suit be brought on for final hearing and shall be heard before the said three judges [fol. 42] on March 7, 1945 in Room 318 of the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, at 2:30 o'clock in the afternoon, or as soon thereafter as counsel can be heard, and it is further

Ordered, that service of a copy of this order upon counsel for the United States of America and for the Interstate Commerce Commission not less than five (5) days before said hearing shall be deemed sufficient notice of said hearing.

Dated: New York, January 26th, 1945.

Alfred C. Coxe, U. S. D. J.

[fol. 43] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Number 27,352

MCALLISTER LIGHTERAGE LINE, INC., Petitioner,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Before Chase, Circuit Judge; Coxe, Clancy, District Judges

Krisel & Beck, for Petitioner; Edward M. Reidy, for Interstate Commerce Commission; Edward Dumbauld, Special Assistant to Attorney General for Unit d States; Wendell Berge, Assistant Attorney General; John F. X. McGohey, United States Attorney.

OPINION—July 16, 1945

CHASE, Circuit Judge:

McAllister Lighterage Line, Inc., and another who is no longer a party to this proceeding, brought this suit in the District Court for the Southern District of New York to set aside an order made by the Interstate Commerce Commission under Part III of the Interstate Commerce Act. It was heard by a court of three judges as required by the Provisions of the Deficiencies Appropriation Act (28 U. S. C. A. sec. 41 (28), 47). The order denied an application by the petitioner for a certificate under the so-called "grandfather" clause in Section 309 (a) of Part III of the act, 49 U. S. C. A. Sec. 909(a) authorizing it to continue certain operations as a common carrier by water, and in the alternative for a certificate based on public convenience and necessity. The alternative ground is no longer relied on. This section, in so far as now material reads [fol. 44] as follows:

> "Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission; Provided, however, that, subject to section 310, if any such carrier or a predecessor in in-

terest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending determination of any such application, the continuance of such operation shall be lawful. * * *"

The application for a certificate was made within the time allowed by the above section and a preliminary report was made by an examiner for the Commission recommending its denial. Thereafter, reconsideration was requested and hearings were had before an examiner, who filed a report likewise recommending the denial of the application. The petitioner filed exceptions to that report which were overruled by Division IV of the Commission in a report and order denying the application. Following that the full commission reviewed the proceedings and entered the order now under review which was made effective as of May 3, 1944.

There is no question as to the jurisdiction of this court and the issues are (1) whether the Commission made adequate findings to the effect that the admitted interruptions in the service the petitioner sought authority to continue was due to causes over which it and its predecessor had no control, and (2) if the findings are sufficient, whether they are supported by the evidence. A subsidiary question was [fol. 45] raised as to the right of the petitioner to broaden its application by amendment at the hearing before the examiner, which will, however, require consideration only if the order is set aside in whole or in part.

The petitioner in its proposed amended application sought a certificate under the "grandfather" clause to continue operation as a common carrier by water from, to and between all ports from Eastport, Me., to North Carolina, over coastwise ocean routes and inland waterways, including Long Island Sound, Hudson River, Delaware and Chesapeake Canal, Delaware Bay, and intercoastal waterway, by tug, barge and general towage.

In the report of Division IV which was confirmed by the full Commission, the following appears, and so far as the findings go they are supported by adequate evidence.

"On January 1, 1940, and since that time, McAllister Lighterage Line, Inc., has been engaged in general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous thereto.* Applicant's services within this area have consisted of (1) transportation of various commodities for shippers and consignees, (2) the docking and undocking of vessels for other carriers, and (3) the furnishing of vessels under bare boat charters at per diem rates to the Pennsylvania Railroad Co.

"The transportation performed for shippers and consignees between points within the above mentioned harbor area is exempted by section 303(g) (1) of the act because it is not performed under common control, management or arrangement with other carriers for continuance through movement to or from a place beyond the limits of the area. The towage performed for other carriers in docking and undocking of vessels is incidental to the transportation by those carriers and applicant's operation is exempt under section 303(f) (2) to the extent that such transportation is subject to the act. In the furnishing of vessels under bare boat charters to the railroad, applicant is not a common or contract carrier as defined in sections 302(d) and (e) of the act.

"In 1939 applicant towed 2 derricks and a crane from and to points outside the above mentioned harbor area. During that year, and since, applicant engaged in no other transportation to or from points outside of the harbor area, except for the movement of 213 tons

of steel piling from the Claremont, N. J. railroad [fol. 46] terminal to Fire Island, N. Y. in November 1940. In April 1942, applicant towed derrick barges and salvor's equipment for a company engaged in salvage operations.

"The towage of the derricks and crane have been exempted from the requirements of Part III of the act by our order of October 29, 1941, in Ex Parte No. 147, *Towage of Floating Objects*. Towage for persons engaged in salvage operations would be incidental to their operations, and applicant's service in connection with such operations is exempted by section 303(g) (2). Therefore, the only transportation performed by applicant which would be subject to regulation under Part III of the act has occurred since January 1, 1940. Applicant must show that it has engaged in non-exempt operations on and before Jan. 1, 1940, as well as since that date, in order to be entitled to a permit. Under these circumstances, we must deny the request for authority to operate to and from points outside harbor area as defined in our order in Ex Parte No. 140.

"Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate set up now consists of McAllister Bros. Inc. which charters all of its equipment to McAllister Lighterage Line Inc. the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horse-power, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs and 2 ocean-going barges of 2,500 ton capacity. The United States Government has requisitioned the two coastal tugs but has allocated to applicant two diesel powered tugs to be operated by it as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all times, applicant has maintained at least one vessel licensed for coastal operations.

"Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salv-

age, fishing, chartering, passenger excursions and managing or operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La.; and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926, applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933, a freight packet line was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried.

"Since 1933 applicant's operations have been confined, primarily, to the New York Harbor area. Some [fol. 47] towing for other carriers and all bulk commodities have been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

"Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309(a); that at various times during the years of depression its operation was limited to one or two tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of section 309(a) an applicant, in order to be entitled to grandfather' rights, must show that it was in bona fide operation on January 1, 1949, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact

> that applicant for a period of over ten years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to 'grandfather' rights."

As the Commission has found on adequately supporting evidence that the petitioner was not in bona fide operation on January 1, 1940, over the routes and between the ports as to which the application was made and has not so operated since that day, the petitioner can, and in fact does, now rely on its contention and proof that it and its predecessors in interest formerly were engaged in such operations and that it would have continued to be so engaged on and after the critical date but for interruptions of the kind which under the statute are not to be treated as a break in the continuity of the service. Their former engagement in service was established and so was the interruption from [fol. 48] about 1930 onward except for slight and irregular operations before 1940. The Commission's findings to that effect are not erroneous because exempt operations were disregarded. This is not a contract carrier application like that in The Barrett Line Inc. v. United States et al. 324 U. S. — (Dec'd June 18, 1945) where bona fide chartering, whether the charterer used the vessels exempt or non-exempt carriage, was held evidence of bona fide operation by the owner within the terms of the applicable statute.

It is true that the Commission did not make a definite finding that the interruption in service before January 1, 1940, either was or was not beyond the control of petitioner and its predecessors and if decision were wholly dependent upon the fact as to that matter the petitioner would have substantial ground for insisting that the cause be remanded to the Commission for a finding on that point. It is essential, as a corollary to the now well settled rule that facts found by an administrative agency on substantial evi-

dence are to be given effect by the courts, that administrative agencies make clear cut findings on all material and controverted issues of fact. "The administrative process will best be vindicated by clarity in its exercise." Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 197. See also, Baltimore and Ohio R. Co. v. United States, 22 F. Supp. 533.

Decision, however, does not depend entirely upon what the petitioner or its predecessors did or failed to do on or before January 1, 1940. The statute requires as a condition precedent to the granting of a "grandfather" certificate, where proof is not made of bona fide operation on January 1, 1940, and since that date, a showing that the interruption of service on and after the critical date was for causes [fol. 49] not within the control of the petitioner or its predecessors. There was no proof whatever of subsequent operation and the Commission found both that the applicant "is not holding itself out at the present time to perform such transportation" and that it "has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor." This makes unimportant any deficiency in the findings as to the interruption of service before January 1, 1940. We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control. Its only excuse for failing to perform such service during the subsequent period is that after the outbreak of World War II all its facilities were required for service in New York Harbor and that after this country was attacked they would have been requisitioned by the government for such use had the petitioner not devoted them voluntarily to that purpose.

Whether or not that is so, however, is problematical and the fact that the petitioner made no attempt to resume the service for which the "grandfather" certificate is now sought leave in the realm of pure speculation what the effect of such an attempt might have been by way of any requisition by the government. We feel bound to give effect to the findings made by the Commission, and when that is done, the petitioner is left short of proof and findings necessary to entitle it to a reversal of the order denying its application for a certificate. The informed

judgment of the Commission must be given effect when based on findings which are supported by the evidence. Mississippi Valley Barge Co. v. United States, 292 U. S. 282.

[fol. 50] We adopt the findings made by the Commission as the findings of this Court. If this opinion is not believed to be a compliance with rule 52 F.R.C.P., the defendants may present proposed findings and conclusions together with their proposed decree.

Harrie B. Chase, U. S. Circuit Judge; Alfred C. Coxe, U. S. District Judge; John W. Clancy, U. S. District Judge.

July 16, 1945.

[fol. 51] In the District Court of the United States for the Southern District of New York

Civil Action No. 27-352

McAllister Lighterage Line, Inc., Petitioner,

v.

United States and Interstate Commerce Commission, Defendants

Final Decree—Filed August 9, 1945

This cause having come on to be heard for final hearing, and was heard on petition, answers to petition, and proofs, and was argued by counsel before the specially-constituted District Court convened pursuant to the provisions of law, and thereupon, upon consideration thereof, it was finally determined, ordered, adjudged and decreed as follows:

1. The orders of the Interstate Commerce Commission entered on July 28, 1942 and February 7, 1944, in Dockets Nos. W-81 and W-217, wherein the Commission denied application under Section 309(a) of Part III for a certificate to engage in transportation of general commodities by water as a common carrier for hire and to render a general towage service for hire over certain specified routes and between certain ports, in interstate commerce, are, in all respects, valid, and such orders were within the statutory

authority of the Commission, and are supported by the evidence.

[fol. 52] 2. The relief prayed in the petition is hereby denied, and the petition is dismissed for want of equity.

3. The defendants, United States of America and Interstate Commerce Commission have judgment against the plaintiff, McAllister Lighterage Line, Inc., of 17 State Street, New York City, New York, for the sum of $27.00 costs as taxed.

Dated: New York, N. Y., August 2nd, 1945.

Approved:

Harrie B. Chase, United States Circuit Judge; Alfred C. Coxe, United States District Judge; John W. Clancy, United States District Judge.

Judgment rendered: George J. H. Follmer, Clerk, Aug. 9, 1945.

[fol. 53] [File endorsement omitted.]

[fol. 54] In United States District Court

[Title omitted]

Petition For Allowance of Appeal

Your petitioner, McAllister Lighterage Line, Inc., respectfully prays that, in accordance with 28 U.S.C. Sections 47 and 47a, the appeal of McAllister Lighterage Line, Inc., petitioner, from this Court to the United States Supreme Court from the final decree and judgment entered herein on August 9, 1945, be allowed, and that the bond for costs on appeal with good and sufficient surety in the sum of $250.00, submitted herewith, be approved.

Your petitioner submits herewith for filing its assignment of errors, together with its statement as to the jurisdiction of the United States Supreme Court, pursuant to Rule 12 of the Rules of said Court.

Dated, New York, October 8, 1945.

Yours, etc., Krisel & Beck, Attorneys for petitioner, by Maurice A. Krisel, a member of the firm, 29 Broadway, Borough of Manhattan, City of New York.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

The within petition of the McAllister Lighterage Line, Inc., petitioner, for an appeal to the United States Supreme Court from a final decree and judgment entered herein on August 9, 1945, having been presented, together with its assignment of errors and statement as to jurisdiction in accordance with Rule 12 of the Rules of the United States Supreme Court, it is

Ordered, that an appeal be and is hereby allowed to the Supreme Court of the United States by McAllister Lighterage Line, Inc., petitioner, from the final decree and judgment entered herein on August 9, 1945, and dated August 9, 1945, and that an appropriate citation issue returnable within forty (40) days from this date, and that the appropriate record, in accordance with the provisions of Title 28 U.S.C. Sections 47 and 47a and in accordance with the Rules of the United States Supreme Court, be docketed in said Court within the forty (40) days, and it is [fol. 56] Further ordered, that the applicant give a bond with good and sufficient surety in the sum of $250.00 for costs on said appeal.

Dated, New York, October 8, 1945.

Alfred C. Coxe, United States District Judge.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

McAllister Lighterage Line, Inc., petitioner in the above entitled suit, hereby assigns error in the opinion, findings, conclusions, and judgment of the Court herein, as follows:

1. The Court erred in not holding that, within the intendment of Section 309(a) of the Interstate Commerce Act, petitioner was in bona fide operation as a common carrier by water on January 1, 1940, and continuously thereafter,

except as to interruptions of service over which petitioner and its predecessors in interest had no control.

2. The Court erred in not holding that in the circumstances revealed by the record the paucity of petitioner's operations during the depression period from 1933 through 1939 did not constitute an abandonment of the service on which petitioner predicates its "grandfather" rights under Section 309(a) of the Interstate Commerce Act.

3. The Court erred in not remanding the proceeding to the Interstate Commerce Commission for appropriate findings as to the cause of the paucity in petitioner's operations during the depression period from 1933 through 1939, [fol. 58] and as to whether such cause constituted an interruption in service over which petitioner and its predecessors in interest had no control, within the meaning of Section 309(a) of the Interstate Commerce Act.

4. The Court erred in not holding that the paucity of petitioner's operations during the period from 1933 through 1939 was an interruption in service beyond petitioner's control within the meaning of Section 309(a) of the Interstate Commerce Act.

5. The Court erred in holding that, within the intendment of Section 309(a) of the Interstate Commerce Act, petitioner's action in confining its service to essential war work within New York Harbor, effective at the time of the hearing before the Interstate Commerce Commission, constitutes an interruption in service over which petitioner had no control, within the meaning of Section 309(a) of the Interstate Commerce Act.

6. The Court erred in holding that the dedication by petitioner of its fleet to the performance of essential war work within the limits of New York Harbor was "voluntary," that is, within petitioner's control, as the term "control" is used in Section 309(a) in the Interstate Commerce Act.

7. The Court erred in failing to remand the proceeding to the Interstate Commerce Commission for the purpose of having the Interstate Commerce Commission make explicit findings as to whether the dedication by petitioner of its fleet to essential war work within New York Harbor,

constituted an interruption in service within petitioner's control within the meaning of the term "control" in Section 309(a) of the Interstate Commerce Act.

[fol. 59] 8. The Court erred in dismissing the petition.

Krisel & Beck, Attorneys for Petitioner, 29 Broadway, Borough of Manhattan, City of New York.

[fols. 60-62] In United States District Court

[Title omitted]

Stipulation Amending Assignment of Error

It is hereby stipulated and agreed that Assignment of Error Number Five, of the Assignments of Error of McAllister Lighterage Line, Inc., Petitioner-Appellant, be deemed amended to read as follows:

"The Court erred in holding that petitioner's action in confining its service to essential war work within New York Harbor, effective at the time of the hearing before the Interstate Commerce Commission, constitutes an interruption in service over which petitioner had control, within the meaning of Section 309 (a) of the Interstate Commerce Act."

Krisel & Beck, Attorneys for Petitioner-Appellant, McAllister Lighterage Line, Inc.; John F. X. McGohey, W. L. L., United States Attorney for the Southern District of New York, Attorney for Defendant, United States of America; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Attorney for Defendant, Interstate Commerce Commission; Edward Dumbauld, Special Assistant to the Attorney General, of Counsel for the Defendant, United States of America.

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE—Filed November 5, 1945

To the clerk of the District Court of the United States for the Southern District of New York:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States, pursuant to the appeal allowed in the above entitled cause, and to include in such transcript the following papers and exhibits:

1. The petition of McAllister Lighterage Line, Inc., to set aside a certain order of the Interstate Commerce Commission.

2. The answers to the aforesaid petition of the United States of America and of the Interstate Commerce Commission, including the exhibits attached thereto.

3. The order convening the Judges constituting the statutory court and affixing the time of the hearing.

4. The opinion of the District Court.

5. The final decree and judgment of the District Court.

6. The order allowing the appeal and petition of McAllister Lighterage Line, Inc., for that order; the assignments of error of the McAllister Lighterage Line, Inc., and stipulation correcting assignment of error number [fol. 64] five; the statement of McAllister Lighterage Line, Inc., as to the jurisdiction of the Supreme Court of the United States, filed pursuant to Rule 12 of the "Revised Rules of the Supreme Court of the United States."

7. The notice directing attention to paragraph 3 of Rule 12 of the "Revised Rules of the Supreme Court of the United States."

8. The affidavit of service of the appeal papers and of the notice directing attention to paragraph 3 of Rule 12 of the "Revised Rules of the Supreme Court of the United States" upon:

A. John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, as the Attorney for the defendant, United States of America;

B. Edward Dumbauld, Esq., Special Assistant to the Attorney General, of Counsel for the defendant, United States of America;

C. Daniel W. Knowlton, Esq., Chief Counsel of the Interstate Commerce Commission, as Attorney for the defendant, Interstate Commerce Commission;

and the acknowledgment by the Honorable Nathaniel L. Goldstein, Attorney General of the State of New York, of due and timely service of the appeal papers, and of the notice directing attention to paragraph 3 of Rule 12 of the "Revised Rules of the Supreme Court of the United States."

9. The citation on appeal; the affidavit of service of the citation upon the United States of America by service upon the Honorable Tom C. Clark, the Attorney General of the United States; waiver of service of citation executed by the Interstate Commerce Commission by Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Commission; and all other proof of service of citation that may be filed herein prior to your preparation of the transcript.

10. Motion of appellees, United States of America and Interstate Commerce Commission, to affirm the decree of [fol. 65] the District Court.

11. This praecipe.

You are hereby further requested to certify the originals of all of the documents constituting the certified record of the Interstate Commerce Commission upon which the order of the Commission, sought to be annulled, was made and to transmit the original, instead of a transcript, of the aforesaid certified record of the Interstate Commerce Commission to the Supreme Court of the United States, together with a certified copy of an order directing you to take this action, which order will be presented for signature prior to your preparation of the transcript of the record.

Yours, etc., Krisel & Beck, Attorneys for Plaintiff-Appellant, McAllister Lighterage Line, Inc. 29 Broadway, Borough of Manhattan, New York, New York.

To: J. Howard McGrath, Esq., Solicitor General of the United States, Attorney for Defendant-Appellee, United States of America Department of Justice, Washington 25, D. C.

Daniel W. Knowlton, Esq., Chief Counsel of the Interstate Commerce Commission Attorney for Defendant-Appellee, Interstate Commerce Commission, Washington 25, D. C.

John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, Attorney for Defendant-Appellee, United States of America, United States Court House, Foley Square, New York, New York.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, of Counsel for the Defendant-Appellee, United States of America, Department of Justice, Washington 25, D. C.

[fol. 66] [Title omitted]

STATE OF NEW YORK,
County of New York, ss.:

Sue Rothlein, being duly sworn, deposes and says that she is employed by the firm of Krisel & Beck, attorneys for the plaintiff-appellant herein.

That on the 29th day of October, 1945, she served a copy of the Praecipe in the above entitled appeal upon J. Howard McGrath, John F. X. McGohey and Edward Dumbauld, attorneys for the defendant appellee, United States of America, and upon Daniel W. Knowlton, attorney for the defendant-appellee, Interstate Commerce Commission, by enclosing true copies of the aforesaid document in sealed, postpaid wrappers, addressed respectively to each of the said attorneys as follows:

J. Howard McGrath, Esq., Solicitor General of the United States, Attorney for Defendant-Appellee, United States of America, Department of Justice, Washington 25, D. C.

John F. X. McGohey, Esq., United States Attorney for the Southern District of New York, Attorney for Defendant-Appellee, United States of America, United States Court House, Foley Square, New York, New York.

[fol. 67] Edward Dumbauld, Esq., Special Assistant to the Attorney General, of Counsel for the Defendant-Appel-

lee, United States of America, Department of Justice, Washington 25, D. C.

Daniel W. Knowlton, Esq., Chief Counsel of the Interstate Commerce Commission, Attorney for Defendant-Appellee, Interstate Commerce Commission, Washington 25, D. C.

and by depositing the same in the post-office box regularly maintained by the United States Government at 29 Broadway, in the Borough of Manhattan, New York, New York.

Deponent further says that J. Howard McGrath, the Solicitor General of the United States, is the attorney for the defendant-appellee, United States of America, and that John F. X. McGohey, United States Attorney for the Southern District of New York, appeared as the attorney of record for the defendant-appellee, United States of America, in the District Court herein, and that Edward Dumbauld is the Special Assistant to the Attorney General of the United States, who acted as counsel for the said defendant-appellee, United States of America, in the District Court herein, and that Daniel W. Knowlton is the attorney for the defendant-appellee, Interstate Commerce Commission, herein, and that the addresses set forth on the wrappers are respectively the office and post-office addresses designated by the aforesaid attorneys upon the last papers served by them in the within proceeding.

Sue Rothlein.

Sworn to before me this 5 day of November, 1945.
Morris Weisman, Notary Public, N. Y. Co. Clks. #2. Term expires 3/30/46. (Seal.)

[fols. 68-75] Citation in usual form showing service on Hon. Tom E. Clark, et al., filed Nov. 5, 1945, omitted in printing.

[fol. 76] In United States District Court

[Title omitted]

Waiver of Service of Citation

Comes the appellees, the United States of America and The Interstate Commerce Commission, by their attorneys, and waive the service of the citation issued and signed in the above entitled cause by the Honorable Alfred C. Coxe,

Judge of the District Court of the United States for the Southern District of New York.

Dated this 15 day of October, 1945.

United States of America, by —— ——, United States Attorney for the Southern District of New York; by —— ——, Special Assistant to the Attorney General, of Counsel for the Defendant, United States of America; The Interstate Commerce Commission, by Daniel W. Knowlton, Chief Counsel; by Edward M. Reidy, Assistant Chief Counsel.

[fols. 77-79] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 80] In United States District Court

[Title omitted]

Order and Stipulation Concerning Certification of Original Documents

On the enclosed consent and stipulation, and on motion of Krisel & Beck, attorneys for McAllister Lighterage Line, Inc., plaintiff-appellant, it is

Ordered, that the Clerk of this Court be and he is hereby directed to certify the originals of all of the documents constituting the certified record of the Interstate Commerce Commission, upon which the Commission's order sought to be annulled was based, which were offered and received in evidence at the trial of this cause and are now on file in his office, instead of a transcript thereof, pursuant to the provisions of Title 28 U. S. Code, Section 47a, to be transmitted to the Supreme Court of the United States in the above entitled appeal. And it is further

Ordered, that the Clerk of this Court transmit to the Supreme Court of the United States, the aforesaid certified record of the Interstate Commerce Commission. And said record be returned to this Court upon termination of the appeal, and it is further

Ordered, that a certified copy of this order be transmitted to the Supreme Court of the United States with the aforesaid documents.

Dated, November 13, 1945, New York, New York.

—— ——, United States District Judge.

[fols. 81-82] CONSENT AND STIPULATION

We hereby consent to the entry of the attached order.

Dated, October —, 1945.

Krisel & Beck, Attorneys for McAllister Lighterage Line, Inc., Plaintiff-Appellant; J. Howard McGrath, Solicitor General of the United States; John F. X. McGohey, United States Attorney, Attorney for Defendant-Appellee, United States of America; Edward M. Reidy, Assistant Chief Counsel, Interstate Commerce Commission, Attorney for Defendant-Appellee, Interstate Commerce Commission.

[fols. 83-84] PETITIONER'S EXHIBIT 1

Secretary's Certificate to Proceedings before I. C. C. omitted in printing.

Form B.W.C. 2

RECEIVED MAY 29 1941 BUREAU OF WATER CARRIERS

WC X 1

MAY 29 '41 964211

APPLICATION For

☐ CERTIFICATE AS COMMON CARRIER BY WATER

☑ PERMIT AS CONTRACT CARRIER BY WATER

SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto.)

H K

. . W -

MAY 2 1941

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of _____
(Name) (Trade Name)

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

_____
(Street address) (City) (State)

Application below is for the appropriate authority to: (check applicable status)

☐ to continue an operation in existence January 1, 1940, and continuously thereafter

☐ to continue an operation not existing January 1, 1940, but existing February 1, 1941

as a ☐ common carrier ☐ contract carrier

of ☐ passengers ☐ property

by water in interstate or foreign commerce (as defined in section 302(i))

Application for certificate as common carrier of property covers

☐ all commodities

☐ commodities with exceptions as detailed in Exhibits "A" or "B"

Application of _____
(Name) (Trade Name)

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

_____
(Street address) (City) (State)

Application below is for the appropriate authority to: (check applicable status)

☐ to continue an operation in existence January 1, 1940, and continuously thereafter

☐ to continue an operation not existing January 1, 1940, but existing February 1, 1941

as a ☐ common carrier ☐ contract carrier

of ☐ passengers ☐ property

by water in interstate or foreign commerce (as defined in section 302(i))

Application for certificate as common carrier of property covers

☐ all commodities

☐ commodities with exceptions as detailed in Exhibits "A" or "B"

Application for a contract carrier permit of property covers

☐ all commodities with exceptions as detailed in Exhibits "A" or "B"

☐ specific commodities as detailed in Exhibits "A" or "B"

Application covers ☐ regular routes

☐ irregular routes

Operation is ☒ year around

☐ seasonal between _____ (month) and _____ (month).

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☒ Exhibit "A" ☐ Exhibit "B"

(See General Instructions)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed)

All operations are claimed to be exempt. See Exhibit "_" annexed hereto, [illegible] 203(b)(6) and (c)(5)(c) of the Act, and all applicable sections of regulations.

WHEREFORE, The applicant herein prays: That the Commission issue a _____ (Certificate) (Permit) to operate as a _____ (Common Carrier) _____ (Contract Carrier) of _____ (Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B") and applicant further prays that if the facts herein contained show that applicant, although applying for a _____ (Certificate) (Permit), is entitled to a _____ (Permit) (Certificate),

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed)

[illegible] exemptions are claimed to be exempt, see Exhibit "A" annexed hereto and made a part hereof, [illegible] sections, 203(b)(6), 203(b)(7), 203(b)(7a), 203(b)(8), 203(b)(9), 203(b)(10), 203(b)(11), 203(b)(12), 203(b)(13), 203(b)(14), 203(b)(15), 203(b)(16), 203(b)(17), 203(b)(18), 203(b)(19), 203(b)(20), 203(b)(21), 203(b)(22), 203(b)(23), 203(b)(24), 203(b)(25), 203(b)(26), 203(b)(27), 203(b)(28), 203(b)(29), 203(b)(30), 203(b)(31), 203(b)(32), 203(b)(33), 203(b)(34), 203(b)(35), 203(b)(36), 203(b)(37), 203(b)(38), 203(b)(39), 203(b)(40), 203(b)(41), 203(b)(42), 203(b)(43), 203(b)(44), 203(b)(45), 203(b)(46), 203(b)(47),

OATH

State of _____ }
County of _____ } ss:

_____ makes oath and says that he
(Name of affiant)

is the _____ of the _____; that he
(Title of affiant) (Name of applicant)

is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

_____

Subscribed and sworn to before me, a _____
in and for the State and county above named, this
_____ day of _____, 194_.

(SEAL)

_____

My commission expires _____

VIOLA C. OTTAVIANO
Notary Public, Westchester County
New York County Clerk's No. 83
Commission Expires March 30, 1943

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States:

_____

_____

_____

_____

EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309(a) or 309(f) of the Interstate Commerce Act.)

[redacted], INC.

(Name of Applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. DESCRIPTION OF TRANSPORTATION SERVICE:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____ (Indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities _____ (Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____ (Yes or No). If answer is "No", state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

Name	Address (Street, City and State)	Written or Verbal Contract or Agreement and Date Thereof
(1)		
(2)		
(3)		
(4)		
(5)		

Jas. P. Allen

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this ____ day of _____, 1941.

(SEAL)

Viola C. Ottaviano

My commission expires _____

VIOLA C. OTTAVIANO
Notary Public, Westchester County
New York County Clerk's No. 83
Commission Expires March 30, 1943

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States:

_____

_____

_____

_____

A notice of the filing of this application (Form B.W.C. 5) has been served by receipted mail on the following known water-line competitors:

_____

_____

_____

_____

Postal receipts or certificates of mailing covering the above are attached hereto.

Date _____ 194_.

Signed Jas. P. Allen

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____ (indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities _____ (indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____ (Yes or No). If answer is "No", state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

	Name	Address (Street, City and State)	Written or Verbal Contract or Agreement and Date Thereof
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

	Commodity Covered	Volume Agreed to be Transported	Duration of Contract or Agreement
(1a)			
(2a)			
(3a)			
(4a)			
(5a)			
(6a)			

(NOTE: Lines (1a),(2a),(3a),etc. are a continuation respective of the same contract referred to on lines (1),(2),(3),etc.)

C. Applicant (or predecessor in interest) has continued to operate as above stated without any change in the transportation service as described above and is now so operating. _____ If answer is "No", state in detail character (Yes or No) and extent of such change in service._____

_____

_____

D. If the changes indicated in the answer to (C) above represent interruptions of transportation service since January 1, 1940, caused by conditions over which applicant (or predecessor in interest) had no control, give facts and reasons clearly and in detail._____

_____

_____

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only._____X If the (Yes or No) answer is "Yes", state the limits of the seasonal operation, naming month of commencement and month of cessation.

_____

If the above seasonal period does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? _____ Was applicant (or predecessor in in- (Yes or No) terest) providing same service during seasonal period subsequent to January 1, 1940? _____ Outline fully any (Yes or No) changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation: _____

_____

_____

_____

II. DESCRIPTION OF ROUTES:

A. Regular Routes:

Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application:

_____ _____ _____ _____ _____

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only. _____X_____ If the
(Yes or No)
answer is "Yes", state the limits of the seasonal operation, naming month of commencement and month of cessation.

If the above seasonal period does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? _____ Was applicant (or predecessor in in-
(Yes or No)
terest) providing same service during seasonal period subsequent to January 1, 1940? _____ Outline fully any
(Yes or No)
changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation:

II. DESCRIPTION OF ROUTES:

A. Regular Routes:

Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application:

B. Irregular Routes:

Ports or points to or from which applicant (or predecessor in interest) offered occasional but irregular service as of January 1, 1940, or prior thereto, and number of

revenue calls at each between January 1, 1940, and date of application:

See Exhibit "E" annexed.

Towing anyplace in New York and contiguous harbors. On rare occasions a tow is made to Long Island Sound, Albany or lower New Jersey. No more than three or four a year. See Exhibit "_" for operations.

C. Has applicant (or predecessor in interest) acquired by purchase or otherwise a route or routes since January 1, 1940? _____ If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of predecessor. Attach copy of purchase agreement, or other documents, evidencing the acquisition of each such route or routes.
(Yes or No)

D. Does applicant apply for rights over any route or routes operated by others under agreement? _____ If so, attach statement, properly designated, giving, for each route, the information requested in A and B above, also name and address of operator. Attach copy of charter, operating contract, or other agreement.
(Yes or No)

E. Does applicant apply for rights over any route or routes over which it operates ships owned by others under charter, contract, or other agreement? _____ If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of the other party to such charter, contract, or agreement. Attach copy of such charter, contract, or agreement.
(Yes or No)

F. Has applicant (or predecessor in interest) abandoned or disposed of by sale or otherwise any route or routes since January 1, 1940? _____ If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, the manner and date of disposition, and name and address of successor, if any. Attach copy of the sales agreement or other documents evidencing such disposal.
(Yes or No)

D. Does applicant apply for rights over any route or routes operated by others under agreement? _____X_____ If so, attach statement, properly designated, giving, for each route, the information requested in A and B above, also name and address of operator. Attach copy of charter, operating contract, or other agreement.
(Yes or No)

E. Does applicant apply for rights over any route or routes over which it operates ships owned by others under charter, contract, or other agreement? _____X_____ If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of the other party to such charter, contract, or agreement. Attach copy of such charter, contract, or agreement.
(Yes or No)

F. Has applicant (or predecessor in interest) abandoned or disposed of by sale or otherwise any route or routes since January 1, 1940? _____ If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, the manner and date of disposition, and name and address of successor, if any. Attach copy of the sales agreement or other documents evidencing such disposal.
(Yes or No)

G. Were operations on any of the above routes or parts of such routes covered by answer to questions C, D, E, or F seasonal? _____ If so, attach statement, properly designated, giving facts clearly and in detail, showing applicant's customary operation (or that of predecessor in interest), including months of normal operating season.
(Yes or No)

H. If applicant (or predecessor in interest) is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic was interchanged as of January 1, 1940, or prior thereto, and interchange points: _____

_____

State clearly any changes since January 1, 1940:

III. DESCRIPTION OF EQUIPMENT:

A. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on January 1, 1940, including vessels owned, chartered, or leased from others. 7 barges, 11 tugs and scows, et
(1) Number of owned vessels operated by applicant (or predecessor in interest) none
(2) Number of vessels under charter to applicant (or predecessor in interest) none
(Answers to (1) and (2) should total answer to (A))

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940.
none

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others 7 barges, 11 tugs
(1) Number of owned vessels operated by applicant (or predecessor in interest) none
(2) Number of vessels under charter to applicant (or predecessor in interest) none
(Answers to (1) and (2) should total answer to (C))

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. none

IV. DUAL OPERATIONS:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No (Yes or No) If answer is "Yes", state name and address of such person, and whether such person is applying for a common carrier

predecessor in interest) none
(2) Number of vessels under charter to applicant (or predecessor in interest) _____
(Answers to (1) and (2) should total answer to (A))

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940.

_____

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others _____
(1) Number of owned vessels operated by applicant (or predecessor in interest) none
(2) Number of vessels under charter to applicant (or predecessor in interest) _____
(Answers to (1) and (2) should total answer to (C))

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. _____

IV. DUAL OPERATIONS:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? _____ If
(Yes or No)
answer is "Yes", state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. _____

_____

_____

Was applicant (or predecessor in interest) so controlled on January 1, 1940? _____
(Yes or No)

B. Does applicant (or predecessor in interest) control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? _____ If
(Yes or No)

answer is "Yes", state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. _____

Did applicant (or predecessor in interest) control such person on January 1, 1940? NO
(Yes or No)

C. Is applicant (or predecessor in interest) under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? YES If answer is "Yes", state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.
(Yes or No)

McAllister Brothers, Inc., 17 State Street, New York City which is applying for a permit.

Was applicant (or predecessor in interest) under such common control on January 1, 1940? YES
(Yes or No)

V. EVIDENCE OF OPERATION:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940:

Various bills to various concerns for which applicant performed services, all annexed hereto. Subject to sheets.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) on the date of this application:

Various bills to various concerns for which applicant performed services, all annexed hereto. Subject to sheets.

McAllister Brothers, Inc., 17 State Street, New York City

which is applying for a permit.

Was applicant (or predecessor in interest) under such common control on January 1, 1940? Yes

(Yes or No)

V. EVIDENCE OF OPERATION:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940:

Various bills to various concerns for which applicant performed services, all annexed hereto. Sundry loose sheets.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) on the date of this application:

Various bills to various concerns for which applicant performed services, all annexed hereto. Sundry loose sheets.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

[fol. 109] EXHIBIT "C"

Name	Address

Lighterage Competitors

1. Lee & Simmons, Inc., 44 Whitehall Street, N. Y. C.
2. Manhattan Lighterage Corp., 17 Battery Place, N. Y. C.
3. Henry Gillen & Sons, 15 Moore Street, N. Y. C.

Towing Competitors

1. Moran Towing Corp., 17 Battery Place, N. Y. C.
2. Dalzell Towing Co. Inc., 17 Battery Place, N. Y. C.
3. E. E. Barrett & Co., 90 West Street, N. Y. C.
4. Meseck Towing Lines, Inc., 1 Broadway, N. Y. C.
5. Mathiason Shipping Co., 11 Moore Street, N. Y. C.
6. Olsen Towing Co., 17 State Street, N. Y. C.
7. Card Towing Line, Inc., 17 Battery Place, N. Y. C.
8. Shamrock Towing Co., Pier 93, Foot of West 53rd Street, N. Y. C.
9. Newtown Creek Towing Co., 51 Madison Avenue, N.Y.C.
10. Reichert Towing Line, Inc., 80 Broad Street, N. Y. C.

Salvage, Heavy Derrick Operations

1. Merritt-Chapman & Scott Corp., 17 Battery Place, N. Y. C.

[fol 110]

Exhibit "D"

	Name	Address	Written or Verbal Contract or Agreement and Date Thereof
1.	American Smelting & Refining Co.	120 Broadway, N.Y.C.	Written
2.	U. S. Metals Refining Co.	Carteret, New Jersey	Written
	American Metal Co., Ltd.	61 Broadway, N.Y.C.	Written
3.	U. S. Government: War Dept.	Raritan Arsenal, Metuchen, N. J.	Written
4.	Pennsylvania Railroad Company	Pier H, Jersey City, N. J.	Verbal
5.	Merritt-Chapman & Scott Corp.	17 Battery Place, N.Y.C.	Verbal
6.	Chile Steamship Company	25 Broadway, N.Y.C.	Written
7.	Stockard & Co., Inc.	17 Battery Place, N.Y.C.	Written
8.	De La Rama Steamship Co.	17 Battery Place, N.Y.C.	Written
9.	Moore & McCormack Co., Inc.	5 Broadway, N.Y.C.	Written
10.	Thorden Line	19 Rector Street, N.Y.C.	Written
11.	Pan Atlantic Steamship Corp.	Pier 45, North River, N.Y.C.	Written
12.	McCormick Steamship Company	17 Battery Place, N.Y.C.	Written

	Commodity Covered	Volume Agreed to Be Transported	Duration of Contract or Agreement
1.	Metals in various forms; ores, concentrates, slag, etc.	Unspecified	Indefinite
2.	Metals in various forms; ores, concentrates, slag, etc.	Unspecified	Indefinite
3.	Dynamite, explosives and munitions	Unspecified	1 Year
4.	General Railroad Commodities	Bare boat charter at per diem rates	Indefinite
5.	Airplanes, heavy derrick & wrecking equipment	Unspecified	Indefinite
6.	Docking and Undocking services	Unspecified	1 Year
7	Same as #6	"	Indefinite
8	"	"	"
9	"	"	"
10	"	"	"
11	"	"	"
12	"	"	"

[fol. 111] EXHIBIT "E"

Lighterage

(a) Applicant performs lighterage operations of all commodities moving within the confines of New York Harbor. On a rare occasion, there is a lighterage operation to a point on Long Island Sound and South Shore of Long Island or Hudson River as far North as Troy; no more than two or three per annum.

(b) Munitions Trade. Contract with the War Department, U. S. Army involves transportation of Munitions consisting of explosives, shells, guns, etc. to and from the Raritan Arsenal, Metuchen, N. J. on the Raritan River to vessels lying at anchorage in Gravesend Bay and Bayonne, N. J.; all within limits of New York Harbor and contiguous harbors thereto.

Charter

Applicant is active in the chartering of scows, barges, lighters and other equipment for the various railroads operating in the confines of New York Harbor.

Towage

(a) Applicant operates on an average of eight to ten tugboats; diesel, steam, oil and coal burning types. It actively participates in the general towage of all harbor equipment to and from all points in New York and contiguous harbors. On a rare occasion, a tow will be made down Long Island Sound or south shore of Long Island or up the Hudson River as far as Troy. The latter would not be performed more than five or six times per annum.

(b) Towage for Railroads. Applicant tows for practically all railroads in the movement of their various equip-
[fol. 112] ment in the confines of New York Harbor and its contiguous harbors thereto.

(c) Docking and Undocking Services. Towboat services in the docking and undocking, shifting, etc. of coastwise, intercoastal and trans-oceanic steamships is provided. All operations being confined to the limits of New York and contiguous harbors thereto.

(d) Contract with Merritt-Chapman & Scott Corp. consists in towing various types of salvage and heavy derrick

equipment to various points in New York Harbor and co-
tiguous harbors thereto. Towage of airplane bombers fro
Floyd Bennett Field to Shipside New York Harbor bein
one of the major towage operations.

Heavy Derrick Operations

Applicant operates a few heavy lift derricks which ar
used in the transportation of odd commodities not tran
ferable by ordinary means of transportation placing sam
on shipboard and other odd out of the way places not con
veniently reached by their conventional means of tran
portation.

Salvage Operations

Applicant operates a limited supply of salvage equipme
on rare occasions.

McALLISTER LIGHTERAGE LINE, Inc.

17 STATE ST., NEW YORK

TELEPHONES
NEW YORK BOWLING GREEN 9-5470
JAS P. McALLISTER JR. MIDWOOD 8-6665
WILLIAM BROPHY FIELDSTONE 3-7033
VINCENT CAMPION, FREEPORT 1866

Give time consumed in Coaling, Crotoning or Waiting for Orders in body of log same as if towing a boat.

Daily Report. Tug [illegible] **19** 37

Began work. _____ **A. M.** **Laid up. Pier** _____ **P. M.**

Received _____ **Tons** hard soft **Coal at** _____

TOWED	FROM	TO	TIME Left	TIME Arrived	Light	Loaded	Tide	Wind Direction
S/S Uruguay	Morse P/S	Pr. 6 N.R.	6.35	10.—				
T/B Lt.	Pr. 6 N.R.	Pr. B'klyn	10.45	10.55				
S/S Minnesota	Stirling	" — "	11.05	11.20				
Tel. & waiting orders at	Pr. E.		11.35	12.40				
Light	" "	Stirling	12.40	12.50				
S/S Scanpenn	Stirling	Fletcher P/S	1.05	1.20				
Tel. & Lt.	Fletcher P/S	Pr. 1 N.R.	1.25	1.50				
Water & orders at	" — "		1.50	5.10				
Tel. & Lt.	Pr. 1 N.R.	Claremont	5.10	5.35				
Lighter	Claremont	Pr. 8 B'klyn	5.35	6.40				
Light	Pr. 8 B'klyn	Hudson Ave	6.40	6.50				
MCA #77	Hudson Ave	Pr. 34 B'klyn	6.50	7.25	Lt.			
Light	Pr. 34 B'klyn	Pr. 60 N.R.	7.25	8.00				
S/S Uruguay	Pr. 60 N.R.	Stirling	9.00	9.20				
Light	" — "	Pr. 10 B'klyn	9.20	9.50				
Empire Tar	Pr. 15 B'klyn	S/S Pr. D. Jersey	9.50	10.20		Ld.		

TOWED	FROM	TO	TIME		Light	Loaded	Tide	Wind Direction
			Left	Arrived				
S/S Uruguay	Morse Dock	Pier 6 N.R.	6.35	6.55				
Tug & Lt.	Pier 6 N.R.	Pier B, Battery	10.45	10.55				
S/S Monmouth	Str. Lane	" — "	11.05	11.25				
Tel. & waiting orders at		Pier D.	11.35	12.40				
Light	" "	Str. Lane	12.40	12.50				
S/S Scanpenn	Str. Lane	Fletcher Dock	1.05	1.20				
Tel. & Lt.	Fletcher Dock	Pier 1 N.R.	1.25	1.50				
Water & orders at		" — "	1.50	5.10				
Tel. & Lt.	Pier 1 N.R.	Clarement	5.10	5.35				
S/S Uruguay	Clarement	Pier 8 & Bklyn.	5.35	6.40				
Light	Pier 8 Bklyn.	Hudson Ave	6.40	6.50				
MCA #77	Hudson Ave	Pier 34 Bklyn.	6.50	7.25	Lt.			
Light	Pier 34 Bklyn.	Pier 60 N.R.	7.25	8.00				
S/S Uruguay	Pier 60 N.R.	Str. Lane	9.00	9.20				
Light	" — "	Pier 15 Bklyn.	9.20	9.50				
Cubican Tar	Pier 15 Bklyn.	Dock & Pier D, Battery	9.50	10.20		Ld.		
Light	Pier D.	Pier 1 N.R.	10.20	10.30				
Called M.C.A. & waiting	orders at Pier 1		10.30	6.00				
Light	Pier 1 N.R.	Jay & Erie Basin	6.00	6.20				

McALLISTER LIGHTERAGE LINE, Inc.

TELEPHONES:
JAS. P. McALLISTER, JR., DEWEY 9-5555
WILLIAM BROWN, FIELDSTONE 3-7033
VINCENT CAMPION, FREEPORT 1555

17 STATE ST., NEW YORK

TELEPHONE
-DAY AND NIGHT
BOWLING GREEN 9-5470

Give time consumed in Coaling, Crotoning or Waiting for Orders in body of log same as if towing a boat.

Daily Report, Tug Isabel a McAllister May 5 1941

Began work, 6[00] A. M. Laid up, Pier 7[00] P. M.

Received _____ Tons hard soft Coal at _____

TOWED	FROM	TO	TIME Left	TIME Arrived	Light	Loaded	Tide	Wind Direction
Lete	Jelves	Morse ODK	6[01]	6[2]				
S/B Solstad	Morse ODK	Medina Steam	6[2]	7[00]			Head in Steam	S/B Solstad 7[00] & 9[30]
" "	Steam	Morse ODK	7[00]	10[00]				
Tel - Lete	Morse ODK	Battery	10[10]	10[2]				
Tel - Lete	Battery	8 W 41st St	10[2]	11[15]				
Yd Mast #11	8 W 41st St	Montague St	11[2]	[illegible]				
Tel - Lete	Montague St	[illegible]	[illegible]	[illegible]				
Commander	83 Beach	[illegible]	[illegible]	[illegible]				
Tel - Lete	[illegible] Beach	[illegible] Bayonne	1[35]	2[15]				
Tel - Lete	Yd Bayonne	[illegible]	2[30]	3[30]				
S/B Brazil	Steam	[illegible]	3[30]	4[00]				
Tel - Lete	83 St	Yd Bayonne	[illegible]	[illegible]				
Repairs to Stm. Pipe	Removed on shore 83 St	Yd	[illegible]	[illegible]				
Tel Lete	Yd Bayonne	14 Commercial	7[15]	[illegible]				
Tel Lete Water -	Yd Bayonne	[illegible]	7[45]					

TOWED	FROM	TO	TIME Left	TIME Arrived	Light	Loaded	Tide	Wind Direction
Tete	Telsea	Morse ODK	6 01 A	6 20 A				
S/S Selstad	Morse ODK	Medina Stream	6 30 A	7 00 A			Head in Stream	S/S Selstad 7 00 to 9 30 A
" "	Stream	Morse ODK	9 30 A	10 00 Am				
Tel - Tete	Morse ODK	Battery	10 10 A	10 20 A				
Tel - Tete	Battery	8 West Side	10 20 A	11 15 A				
Yd Float # 11	8 West Shore	Montague St	11 20 A	1 20 P				
Tel - Tete	Montague St	[illegible]	[illegible]	[illegible]				
Commander	83 Basin	82 [illegible]	[illegible]	[illegible]				
Tel - Tete	12 Basin	4 Bayonne	1 35 P	2 15 P				
Tel - Tete	Yd Bayonne	[illegible]	[illegible]	[illegible]				
S/S Brazil	Stream	[illegible]	[illegible]	[illegible]				
Tel - Tete	[illegible]	[illegible]	[illegible]	[illegible]				
Repairs to Stm. Pinch T	Removed to shore	[illegible]	[illegible]	[illegible]				
Tel Tete	Yd Engine	[illegible]	7 40 PM	[illegible]				
Fresh Water - Tete	Cedar St	[illegible]	7 40 PM					
	[illegible]	[illegible]						
Mail # 48	Yd Bayonne	[illegible] DOK	9 30 PM	9 50 PM	-			
Tel - Waiting Lighters at Morse	Morse Sug Wh	[illegible]	9 15 PM	[illegible]				
Tel - Tete	Morse Sug Wh	Battery	[illegible]	[illegible]				
Tel - Tete	[illegible]	[illegible]	[illegible]	[illegible]				

New York August 7th, 1939

[illegible] Co., Inc.

The McALLISTER LIGHTERAGE LINE, Inc.

Towing, Transportation and General Lighterage

Hudson River, Harbor, Sound and Coastwise Towing

17 STATE STREET *No.*

August 7th-	Docking S.S BRAZIL	
	at Pier 60, North River	
5 tugs	@ Minimum Charge $30.00 per tug	$150.00
	Less 7½%	11.25
		$138.75

When the captain of any tug furnished to or engaged in the service of assisting a vessel which is making use of her own propelling power goes on board said vessel, or any other licensed pilot goes on board said vessel, it is understood and agreed that said tugboat captain or licensed pilot becomes the servant of the owners of the vessel assisted in respect to the giving of orders to any of the tugs furnished to or engaged in the assisting service and in respect to the handling of such vessel, and neither those furnishing the tugs and or pilot nor the tugs, their owners, agents, or charterers shall be liable for any damage resulting therefrom.

TELEPHONE
BOwling Green 9-5470

TUGS
DERRICKS
OPEN BARGES
COVERED LIGHTERS
STEAM LIGHTERS

New York, December 7th, 1939

Merritt-Chapman & Scott Corporation

The McALLISTER LIGHTERAGE LINE, Inc.

Towing, Transportation and General Lighterage

Hudson River, Harbor, Sound and Coastwise Towing

17 STATE STREET *No.*

Towing

Dec. 7th- Derrick COMMODORE — From Greenville, N.J.

To Pier 57, North River — $44.00

Tug JOHN E.McALLISTER

New York, April 30th, 1941

S.S. [illegible] Owners
Moore & McCormack Co. Inc.

TUGS
DERRICKS
OPEN BARGES
COVERED LIGHTERS
STEAM LIGHTERS

The McALLISTER LIGHTERAGE LINE, Inc.

Towing, Transportation and General Lighterage

Hudson River, Harbor, Sound and Coastwise Towing

17 STATE STREET. No.

April 30th-	Transporting S.S [illegible] From at anchor off [illegible] to Pier 3 Hoboken	
Tug C.M.McALLISTER-	5:30 to 8:00 A.M.	
	2 hrs. 30 min. @ $18.75 per hr.	$46.87
	Overtime- 5:30 to 7:00 A.M.	
	1 hr. 30 min. @ $9.00 per hr.	13.50
Tug ISABEL A.McALLISTER-		
	Assisted in docking vessel at Hoboken	
	Minimum Charge	30.00
	Overtime- 6:15 to 7:00 A.M.	
	45 min. @ $9.00 per hr.	6.75
		$97.12
	Less 7%	7.28
		$89.84

When the captain of any tug furnished to or engaged in the service of assisting a vessel which is making use of her own propelling power goes on board said vessel, or any other licensed pilot goes on board said vessel, it is understood and agreed that said tug or captain or licensed pilot becomes the servant of the owners of the vessel assisted in respect to the giving of orders to any of the tugs furnished to or engaged in the assisting service and in respect to the handling of said vessel, and neither those furnishing the tugs and or pilot nor the tugs, their owners, agents or bargees shall be liable for any damage resulting therefrom.

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TELEPHONE
BOwling Green 9-5470

TUGS
DERRICKS
OPEN BARGES
COVERED LIGHTERS
STEAM LIGHTERS

New York, [illegible] 1951

[illegible] Scott Jones.

The McALLISTER LIGHTERAGE LINE, Inc.

Towing, Transportation and General Lighterage

Hudson River, Harbor, Sound and Coastwise Towing

17 STATE STREET No.

TOWING

April 28th- Derrick LOS ANGELES	From Pier 1/2, Army Base To Pier 22, Clifton, S.J.		
Derrick LOS ANGELES	From Pier 22, Clifton, S.J. To Ambrose Channel.		
Derrick LOS ANGELES	Standing by in Ambrose Channel From Ambrose Channel To Pier 22, Clifton, S.J.		
Tug ISABEL A. McALLISTER	8:30 A.M. to 10:00 P.M. 13 hrs. 30 min. @ $18.75 per hr.	253.12	
Overtime	5 hrs. @ $9.00 per hr.	45.00	
		298.12	

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[fol. 119] BUREAU OF WATER CARRIERS

No. W-81

McAllister Lighterage Line Inc.

No. W-217

McAllister Brothers, Incorporated

December 22, 1941

Memorandum to Director Talmadge

In accordance with your instructions we called at the offices of McAllister Lighterage Line, Inc., and McAllister Brothers, Incorporated, at 17 State St., New York, N. Y., on Monday, November 3, at 10 a.m., and again on Friday, November 7, at 4 p.m. Present at these interviews were James P. McAllister, vice president of McAllister Lighterage, and Anthony J. McAllister, president of McAllister Brothers, Inc.

McAllister Brothers, Inc. owns 50 vessels. It is not an operating company and its sole business consists in the chartering of its vessels to McAllister Lighterage Line, Inc.

Information submitted at this interview indicates that McAllister Lighterage Line, Inc., the operating company, has, with four exceptions, confined its operations for the last several years to points within New York harbor, and that such transportation is not under common control, management, or arrangement for transportation from or to a point outside of such harbor. Three of the exceptions [fol. 120] involve the towing of derricks between New York harbor and points in New York outside of the harbor. The fourth exception involves a movement on November 4, 1940, of steel piling from New York harbor to Fire Island, N. Y.

At the interview it developed that applicant, McAllister Lighterage Line, Inc., or its predecessor, has been engaged in marine transportation for approximately 75 years, and that during this period it has operated ocean-going tankers to all points in the world, that it formerly ran a freight packet line between New York and Philadelphia with connections to Baltimore, and that at one time it operated to points in New Jersey and on Long Island. However, since 1930 applicant has confined its operations to points within

New York harbor as defined in Ex Parte No. 140, although it has held itself out to perform towage service outside of New York harbor and has recently purchased two coastwise barges and is contemplating the purchase of two ocean-going tugs with a view to re-entering the coastal field if and when the opportunity presents itself. We advised applicant of the proper steps to take to secure the necessary authority before extending its operations.

Submitted in support of the application is an affidavit signed by James P. McAllister setting forth a brief history of the applicant. Also submitted is a copy of a lighterage [fol. 121]contract between both applicants and the U. S. Metal Refining Company and Akron Metal Company, Ltd., covering the transportation of ores, mattes, pig refined metals, and/or other metal-urgical products between points within the New York harbor lighterage limits.

Milton E. Diehl, Richard V. Pitts, Jr.

(Here follows 1 photolithograph, side folio 122)

CONFIDENTIAL FILE

Docket No. W- 21

QUESTIONNAIRE RE. APPLICATION

For

☐ CERTIFICATE AS COMMON CARRIER BY WATER

☒ PERMIT AS CONTRACT CARRIER BY WATER

To be answered by Commission field representatives and returned to Bureau of Water Carriers, Washington, D. C.

Application of McAllister Lighterage Line Inc.
(Name) (Trade Name)

17 State St., New York, N. Y. (Corp.)
(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

(Street address) (City) (State)

Application for the appropriate authority: (check applicable status)

In business at above address.

☒ to continue an operation in existence January 1, 1940, and continuously thereafter	☐ common carrier	☐ passengers
as a		of
☐ to continue an operation not existing January 1, 1940, but existing February 1, 1941	☒ contract carrier	☒ property

by water in interstate or foreign commerce (as defined in section 302 (i))

☒ **PERMIT AS CONTRACT CARRIER BY WATER**

To be answered by Commission field representatives and returned to Bureau of Water Carriers, Washington, D. C.

Application of McAllister Lighterage Line Inc.
(Name) (Trade Name)

17 State St., New York, N. Y. (Corp.)
(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

(Street address) (City) (State)

Application for the appropriate authority: (check applicable status)

In business about 70 years.

☒ to continue an operation in existence January 1, 1940, and continuously thereafter

☐ to continue an operation not existing January 1, 1940, but existing February 1, 1941

as a ☐ common carrier ☒ contract carrier

of ☐ passengers ☒ property

by water in interstate or foreign commerce (as defined in section 302 (i))

Atts: Charts A and B

[fol. 123] The so-called "grandfather" clause relating to common carriers is included in *section 309 (a)*, which reads as follows:

"Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful.* If the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c), and such certificate shall be issued or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application." (Italics supplied.)

The so-called "grandfather" clause relating to contract carriers is included in *section 309 (f)*, which reads as follows:

> "Except as otherwise provided in this section and section 311, no person shall engage in the business of a contract carrier by water unless he or it holds an effective permit, issued by the Commission authorizing such operation: *Provided, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by water* [fol. 124] *on January 1, 1940, over the route or routes or between the ports with respect to which application is made, and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in subsection (g) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful.* If the application for such permit is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (g), and such permit shall be issued or denied accordingly. Any person, not included within the provision of the foregoing proviso, who is engaged in transportation as a contract carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a permit, and, if application for such permit is made to the Commission within such period, the continuance of such operation shall be lawful pending the determination of such application." (Italics supplied.)

The facts necessary for a proper determination of the rights covered by the applications may be grouped under four headings:

I. Common or Contract Carrier

II. Operations Conducted on or Before January 1, 1940

III. Operations Instituted After January 1, 1940, and Before February 1, 1941

IV. Exempt Operations

I. *Common or Contract Carrier*

Section 302 (d) defines a common carrier and reads as follows:

> "The term 'common carrier by water' means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except [fol. 125] transportation by water by an express company subject to part I in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to part I."

This is a familiar definition of a common carrier similar to the definition of a common carrier appearing in Parts I and II of the Act.

The term "contract carrier" is defined in *section 302 (e)* which reads as follows:

> *"The term 'contract carrier by water' means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (d) and the exception therein) by water of passengers or property in interstate or foreign commerce for compensation.*
> The furnishing for compensation (under a charter, lease, or other agreement) of a vessel, to a person other than a carrier subject to this Act, to be used by the person to whom such vessel is furnished in the transportation of its own property, shall be considered to constitute, as to the vessel so furnished, engaging in transportation for compensation by the person furnish-

ing such vessel, within the meaning of the foregoing definition of 'contract carrier by water.' Whenever the Commission, upon its own motion or upon application of any interested party, determines that the application of the preceding sentence to any person or class of persons is not necessary in order to effectuate the national transportation policy declared in this Act, it shall by order exempt such person or class of persons from the provisions of this part for such period of time as may be specified in such order. The Commission may by order revoke any such exemption whenever it shall find that the application of such sentence to the exempted person or class of persons is necessary in order to effectuate such national transportation policy. No such exemption shall be denied or revoked except after reasonable opportunity for hearing." (Italics supplied.)

The italicized portion of the above language is the basic definition and is similar to the definition in Part II of the Act which will be familiar to those members of the Commission's field staff who are assigned to the Bureau of Motor Carriers. The term "contract carrier" may not be a familiar term to the staff of the Bureau of Accounts, and a brief explanation thereof may be helpful. It is first to be noted that a contract carrier is a carrier for hire but one that is not a common carrier. If, therefore, a carrier transports property for the public generally or any class or classes thereof, it probably is a common carrier despite the fact that it makes individual contracts with all shippers whom it serves. While no hard and fast rule can be laid down, a true contract carrier is one who voluntarily restricts his [fol. 126] service to transportation of a limited number of commodities and serves materially less than all shippers of each such commodity.

The balance of the quoted definition, which includes provision for a discretionary exemption, will need some explanation. Administrative ruling No. 8 states the view of the Bureau of Water Carriers as to the effect of the definition.

In answering the questionnaire no consideration need be given to the exemption provision quoted.

The answers to the questions which follow should enable the Commission to determine whether a particular carrier

is a common carrier or a contract carrier by water. (Questions 1-12 refer to transportation of property only.)

Q. 1. Does the carrier make contracts with each of its shippers covering transportation greater in scope than that covered by the individual bill of lading issued?

A. No.
Yes or No

Q. 2. If the answer to question 1 is "No", does carrier make such contracts with any of its shippers?

A. Yes.
Yes or No If answer is "Yes", explain fully.
See attached

Q. 3. If such contracts are made, do they cover a series of shipments to be made over a period of time?

A. Yes.
Yes or No

Q. 4. Submit copy of typical contract. If the contracts are oral give a full description of typical contracts.

A. See attached

Q. 5. Does the usual contract place the shipper under any obligation, other than to pay for the transportation?

A. Yes.
Yes or No If answer is "Yes", explain fully.
See attached

[fol. 127] Q. 6. For how many shippers does the carrier transport property?

A. About 100.

Q. 7. How many different commodities does the carrier transport?

A. All commodities but confined to N. Y. harbor

Q. 8. Does the nature of the commodities transported require special facilities or equipment?

A. Yes.
Yes or No If answer is "Yes", describe.
Derrick boats

Q. 9. Does the carrier actively solicit all shippers of the commodities he transports, by means of soliciting

freight agents, advertisements, direct mail, or otherwise?

A. Yes.
Yes or No

Q. 10. Does carrier similarly solicit transportation of additional commodities not previously transported?

A. Yes, but in N. Y. harbor
Yes or No

Q. 11. Does the carrier as a practice refuse to transport for certain shippers while transporting the same commodities for other shippers?

A. Yes.
Yes or No If answer is "Yes", explain fully. Because business is confined largely to regular customers with whom applicant does year round or full season business.

Q. 12. Does the carrier interchange freight with common carriers by railroad, water, pipeline, or motor vehicle?

A. No, except harbor for acct. of R. R. Cos.
Yes or No
If the answer to the preceding question is "Yes", explain in detail how such traffic is handled and particularly whether through bills of lading are issued; if not, whether one carrier advances the charges of the other, collecting the total from the consignor or consignee; and whether the originating carrier arranges or contracts for the transportation by the second carrier.

[fol. 128] Q. 13. If passengers are transported physically within a single State only, does applicant transport such passengers on through tickets in connection with another carrier to or from another State?

A. X (No passengers).
Yes or No

Q. 14. If applicant transports passengers for hire, is any of such transportation done by vessel charter or group contract?

A. X.
Yes or no

If the answer to the preceding question is "Yes", advise in detail as to such group transportation, indicating the number of parties so transported in last year.

X.

II. Operations conducted on or before January 1, 1940

As shown by the so-called "grandfather" clauses quoted above, an applicant, to have a right to a certificate without proof of public convenience and necessity, or to a permit without proof of consistency with the public interest and the national transportation policy, must have been in bona fide operation on January 1, 1940, and continuously since that time. The Commission in its administration of Part II of the Act, which contains a similar provision, has held that in determining the operations on the "grandfather" date consideration may be given to the operation in the preceding six months. In the case of water transportation a longer period prior to the "grandfather" date may have to be considered. Information should be obtained as to the last date prior to January 1, 1940, on which any given port was served. Ports may be served frequently or infrequently by water. For example, a carrier operating a single vessel between New York and the Pacific Coast can not serve any port more than once in three months and may engage in much less frequent service to many ports. In considering whether the service is continuous or not weight must be given to the length of time required for a round trip and the normal frequency of carrier's service. For convenience, chart A is attached on which the following facts should be shown.

[fol. 129] Note: The questions follow the language of the statute in referring to "ports or points" served. Do not list individual "points" within a "port"; but if "points" served can not be identified by name of a "port" identify by municipality or nearest similar designation possible. (Questions 15-20 refer to transportation of property only.)

Q. 15. Show on chart A, column 1, all ports or points served on or within one year prior to January 1, 1940.

Q. 16. Show on chart A, column 2, last date prior to January 1, 1940, on which applicant served each such port or point.

Q. 17. Show on chart A, column 3, approximate number of calls at such port or point within year preceding January 1, 1940, i.e., "365" equals daily service; "52" equals weekly service; "12" equals monthly service, etc.

Q. 18. Show similarly on chart A, column 4, approximate number of calls per annum made at each such port or point since January 1, 1940.

Q. 19. Show on chart A, column 5, the number of commodities loaded at each port or point.

Q. 20. Show on chart A, column 6, the number of commodities discharged by applicant at each such port or point.

Note: Have applicant prepare a list of individual commodities transported from, to, or via each port or point served by applicant, and after checking to the extent felt necessary by the field representative to establish accuracy of the list, attach such list hereto, identified by reference to questions 19 and 20. Where more than 10 commodities are handled to, from or via a port, estimate number of commodities and require carrier to list only the ten principal commodities as follows: General commodities, principal of which are ——.

Q. 21. Show on chart A, columns 7 and 8, ports or points between which passengers were transported regularly on or prior to January 1, 1940, and since.

Q. 22. As to any port or point not served with reasonable regularity as to either passengers or property since January 1, 1940, submit herewith detailed explanation of the irregularity of service, with your comments.

Q. 23. As to any port or point claimed in application but not served within year prior to January 1, 1940, as to either passengers or property, or since, submit herewith explanation of applicant's basis for claiming right to such port or point, with your comments.

Note: A carrier operating on the Mississippi River may claim rights to transport property as either a common or contract carrier from Minneapolis to New Orleans, including all intermediate ports or points. The records of the [fol. 130] carrier may disclose that prior to the "grandfather" date, and since, the carrier has not actually served certain of the intermediate points. The facts, however, may show that the carrier held itself out to perform such

transportation and failed to do so only because no shipper wished goods transported to certain of the intermediate points. The Commission and the courts have held that the holding out theory is a sound one if the actual operations reasonably show the holding out to be bona fide. For example, if the carrier on the Mississippi River had actually only served Minneapolis, St. Louis, Memphis, and New Orleans, it could hardly be said that his holding out entitled him to operating authority to serve all intermediate points between Minneapolis and New Orleans. On the other hand, if the carrier did actually hold out to serve or was under contract to serve intermediate points, and can show that it did in fact serve any such port or point when reasonably called on to do so, the holding out or commitment would probably justify granting of authority to all intermediate points. The same is true after the "grandfather" date. The mere fact that since January 1, 1940, a carrier has not served every intermediate point does not mean that the service has not been continuous.

III. Operations Instituted After January 1, 1940, and Before February 1, 1941

Note: Questions 24-29 refer to transportation of property only.

Q. 24. Show on chart B, column 1, ports or points not served on or prior to January 1, 1940, but served after January 1, 1940, and before February 1, 1941.

Q. 25. Show on chart B, column 2, first date prior to February 1, 1941, on which port or point served.

Q. 26. Show on chart B, column 3, last date on which port or point served.

Q. 27. Show on chart B, column 4, the number of calls on annual basis since service was inaugurated, i. e., "365" equals daily service; "52" equals weekly service; "12" equals monthly service, etc.

Q. 28. Show on chart B, column 5, the number of commodities loaded at each such port or point.

Q. 29. Show on chart B, column 6, the number of commodities discharged at each such port.

Note: Have applicant prepare a list of individual commodities transported from, to, or via each port or point served by applicant, and after checking to the extent felt necessary by the field representative to establish accuracy

of the list, attach such list hereto, identified by reference to questions 28 and 29. Where more than 10 commodities are handled to, from, or via a port, estimate number of commodities and require carrier to list only the ten principal commodities as follows: General commodities, principal of which are——.

[fol. 131] Q. 30. Show on Chart B, columns 7 and 8, ports or points between which passengers have been regularly transported since service was instituted.

Q. 31. As to any port or point not served with reasonable regularity as to either property or passengers since inception of service, submit herewith detailed explanation for the irregularity of service. See note on pages 8 and 9.

Q. 32. Name other carriers *by water* who are engaged in the same or similar operations as to property or passengers.

Note: Data concerning other modes of transportation is available from Commission's records.

Q. 33. Describe applicant's equipment in detail used in this service, whether owned or chartered. See Exhibit "B", question 3, of Form B. W. C. 2.

Name of Vessel	Owned or Chartered	Indicated Horsepower	Cargo Capacity in Net Tons	Passenger Carrying Capacity
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

All vessels are over 100 indicated horsepower or 100 tons cargo capacity.

Q. 34. What persons or organizations encouraged applicant to institute this service?

Q. 35. Have applicant submit proof thereof in the form of correspondence or sworn statements, and attach hereto.

Q. 36. Have applicant furnish statement from users thereof as to the need for applicant's services, indicating:

[fol. 132] (a) Why service rendered by other carriers is not sufficient?

(b) Why they decided to use applicant's services?

(c) How much traffic have they given applicant?

(d) What carrier moved that traffic prior to institution of service by applicant?

(e) What effect would denial of application have upon their business?

Note: The Commission's field representative should check, so far as possible, the accuracy of statements made by the users of applicant's service.

Q. 37. From your examination of the records of applicant, what is *your opinion* as to whether there is satisfactory proof that the service is justified, considering the statutory requirements with respect to public convenience and necessity or consistency with the public interest and the national transportation policy?

A. . . .

IV. Exempt Operations

Q. 38. Is applicant engaged in any transportation by water which is not covered by the application?

A. No.

Yes or No If answer is "Yes", explain nature of such transportation.

Q. 39. Does any transportation covered by the application appear to be exempt? I.e.:

(a) Transportation of commodities in bulk when not more than three such commodities and no commodity not in bulk transported in a vessel or tow. (Section 303 (b) and (c)).

[fol. 133] (b) Transportation of liquid cargo in bulk in certificated tank vessel designed exclusively for such use. (Section 303 (d))

(c) Transportation by water for a carrier subject to the Act. (Section 303 (f))

(d) Transportation within a single harbor or contiguous harbors but not under common control, management, or arrangement. (Section 303 (g))

(e) Transportation by small craft and ferries, salvors, etc. (Section 303 (g))

(f) Intrastate or foreign transportation not subject to Part III.

(g) Private transportation.

A. Yes.

Yes or No. If answer is "Yes", describe such exempt transportation.

Operations within New York Harbor as defined in Ex Parte 140.

Q. 40. Should application be amended by reason of the answers to questions 38 or 39?

A. No.

Yes or No. If answer is "Yes", explain.

General Information

Q. 41. What persons controlling, controlled by, or under common control with the applicant are engaged in business connected with applicant's transportation service? State generally nature of such business and nature of affiliation. If such person is a user of applicant's service, explain fully.

A. Applicant and McAllister Brothers, Inc., are both owned by same parties. McAllister Brothers, Inc. owns vessels used and charters them to applicant. McAllister Brothers, Inc., does not perform any operations in its own name.

(Here follows 2 photolithographs, side folios 134, 135.)

(See Questions 15 thru 21, Page 8)

CHART A

Column #1	Column #2	Column #3	Column #4	Column #5	Column #6	Column #7	Column #8
	FREIGHT SERVICE					PASSENGER SERVICE	
Ports Served On Jan. 1, 1940, And One Year Prior Thereto		Number of Calls Per Annum		Commodities		Ports Served On, Prior To, And Since Jan. 1, 1940	
McAllister Lighterage Line, Inc.	Last Date of Service Prior To Jan. 1, 1940	Within One Year Preceding Jan. 1, 1940	Since Jan. 1, 1940	Number Loaded	Number Discharged	From	To
Name							
Port of New York with occasional runs up Hudson River, Long Island Sound and N. J. coast.	Same	Same	Same	all types	all types		
Port Washington to 69 St., B'klyn.	11/29/39	✓		derrick (towing)			
17 St., B'klyn. to Port Wash.	11/27/39	✓		derrick (towing)			
6 St., Gowanus Canal to Coey-man's, N.Y.	6/11/39	✓		Hammerhead Crane. (towing)			
L.V.R.R. Claremont Terminal to Fire Island	✓		11/4/40	213 tons Steel Piling			
L.I.C. to South Amboy - South Amboy to South River - South River to South Amboy - South Amboy to O'Brien Stake Boat -				Towing			

(See Questions 24 thru 30, Pages 9 and 10)

CHART B

Column #1	Column #2	Column #3	Column #4	Column #5	Column #6	Column #7	Column #8
FREIGHT SERVICE						PASSENGER SERVICE	
Ports Served Subsequent To Jan. 1, 1940, And Prior To Febr. 1, 1941			Number of Calls	Commodities		Ports Served Since Service Instituted	
Name	Date First Served Prior To Febr. 1, 1941	Date Last Served	Annual Basis	Number Loaded	Number Discharged	From	To

[fol. 136] General Instructions To Field Representatives

This questionnaire is designed to develop facts necessary for the proper determination of applications filed by water carriers on Form B. W. C. 2. The answers should be filled in by representatives of the Commission and not by the carriers. Leave a left-hand margin of not less than 1¼ inches.

The applicant is entitled to continue to do any business in which he was engaged on January 1, 1940, under the "grandfather" clauses (section 309 (a) and (f)) of Part III of the Interstate Commerce Act, provided he has continuously since so engaged. With respect to any service instituted after January 1, 1940, and prior to February 1, 1941, applicant is entitled to continue such transportation until Commission determination of the application, but must prove, if a common carrier, that public convenience and necessity require such service, and, if a contract carrier, consistency with the public interest and the national transportation policy declared in the Interstate Commerce Act.

It will be noted that Form B. W. C. 2 contains two exhibits, "A" and "B". It will be observed from the instructions contained in Form B. W. C. 2 that Exhibit "A" was to be used in describing operations which were conducted on January 1, 1940, and continuously since, and Exhibit "B" was to be used in describing operations that were started during the so-called interim period that is, after January 1, 1940, and prior to February 1, 1941. If the applicant has through error or misunderstanding included in Exhibit "A" any claims which should have properly been included in Exhibit "B", have said applicant execute a new Exhibit "B" (one copy) and after checking the information contained therein attach it to this questionnaire when you return it to this Bureau. Similarly, if applicant in error included in Exhibit "B" any claims which should have properly been included in Exhibit "A" have applicant prepare a new Exhibit "A" (one copy) and attach to this questionnaire.

When making an investigation the representative of the Commission should have before him a copy of the carrier's application in which is set forth the extent of its operations on the "grandfather" date, January 1, 1940, and continuously since, and also its operations instituted between Jan-

uary 1, 1940, and February 1, 1941. The accuracy of the statements contained in the application should be carefully checked. It is believed that the larger carriers will have records from which one can accurately determine the scope of their operations. In answering the questions reference should be made, in general terms, to the records of the carrier which disclose the information contained in the answers. The smaller carriers may not maintain adequate records, in which case the necessary information should be obtained by interviewing representatives of the carrier. The information so obtained should be reduced to writing and signed by the carrier. Wherever possible an affidavit should be obtained as to the correctness of the written statement. If records of carrier are insufficient to support any part of claims, said carrier should be requested to obtain detailed written statements from shippers or others for whom he transported.

[fol. 137] AFFIDAVIT OF JAMES P. MCALLISTER

STATE OF NEW YORK,
County of New York, ss:

James P. McAllister, being duly sworn deposes and says:

That he is Vice-President, General Manager of McAllister Lighterage Line, Inc.

That McAllister has participated in marine transportation business approximately for the past 75 years. That up to the year 1927, McAllister had operated a fleet of ocean-going oil tankers to all parts of the world for and on behalf of the U. S. Shipping Board.

That during a period ending 1933, McAllister had run a freight packet line via canal and inland waters between New York and Philadelphia with connections to Baltimore. That prior to a ten-year period before January 1940, McAllister was interested in various coastal operations and other none-harbor marine transportation business. That as of January 1, 1940 and for a ten-year depression period prior, thereto, McAllister's operations were confined to New York harbor activity with a few runs now and then either down the Sound or up the Hudson River or to close points on the Jersey and Long Island coasts.

It is impossible for this company to show any actual records of marine transportation business other than New York harbor and the above described short runs outside, thereof, for period of ten years prior to January 1, 1940.

However, this company has always held itself out and in readiness to participate in any type of marine transportation business that might develop. This company always maintains one or two licensed tugs for coastal operations for just such purposes. At present, this company owns two coast wise tugs and is presently rebuilding a third diesel coastal tug. Within the past year, McAllister has purchased two coastal wise barges and is presently negotiating for the possible purchase of two more ocean going tugs.

[fol. 138] Other than an occasional tow for a specific customer to points on Long Island Sound, up the Hudson River and Jersey Shore, the records of McAllister indicate that for a- approximate ten-year period prior to 1940, all of its operations were limited to the confines of New York Harbor. Any tows made outside of New York Harbor were at the specific instance of a specific customer to whom McAllister has always held itself out to tow to any one of the above described ports for the convenience of the said specific customer.

It has been the intention of this company to reenter the coastal field, if and when the opportunity presents itself and has been preparing to do so along the above lines for a few years back.

We wish the within information to be made a part of the record in this company's application before the Interstate Commerce Commission.

James P. McAllister.

Sworn to before me this 7th day of November, 1941.
Florence C. Lockwood, Notary Public.

[fol. 139] LIGHTERAGE CONTRACT

Agreement made this 22nd day of September, Nineteen Hundred and Forty-One, between the United States Metals Refining Company, party of the first part, The American Metal Company, Limited, party of the second part, hereinafter jointly referred to as Shippers, and McAllister Brothers, Incorporated, party of the third part, McAllister

Lighterage Line, Inc., party of the fourth part, hereinafter referred to as the Lightermen.

Witnesseth: That in consideration of the sum of One Dollar paid by each of the parties hereto to each of the others, receipt of which is hereby acknowledged, and of the agreements hereinafter contained, and of other good and valuable consideration, the parties hereto agree as follows:

Lighterage Service Price and Lighterage Limits: The Shippers agree to ship and the Lightermen agree to lighter all the ores, mattes, pig, refined metals and/or other metal-urgical products (excepting gold and silver bullion and rare metals such as platinum and palladium) whether in bulk, packages or barrels and also when necessary empty packages, barrels, or sacks that the Shippers shall have occasion to have transported between points in New York Harbor and Carteret, New Jersey, in either direction and between any other points within the New York Harbor lighterage limits during the period below stated at the rate of — per ton.

Bagged material to be transported at the rate of — per ton with a minimum of — for any single delivery. The rates for the points mentioned below to be as follows:

Between Carteret and Perth Amboy (including Raritan Copper Works), Minimum — tons, — per ton, free loading and unloading.

Carteret to Bayway, Minimum — tons, — per ton, free loading.

[fol. 140] Carteret to Hastings, Minimum — tons, — per ton, free loading.

Carteret to Yonkers, Minimum — tons, — per ton, free loading.

Where two deliveries aggregating not less than — tons are loaded upon a single lighter for destinations in the same general territory, the lowest rate per ton for each destination shall be applicable, without regard to minimums provided above.

Between New York and Raritan Copper Works. Minimum — tons — per ton, free loading or unloading.

New York to Perth Amboy—Rates paid for this

transportation by the American Smelting & Refining Co. to apply as maximum.

New York to Laurel Hill, Long Island, Minimum — tons, — per ton, free unloading.

Trans-shipments New York Harbor—Minimum tons, — per ton, including both loading and unloading.

Definitions: A Ton is 2,000 pounds avoirdupois.

The New York Harbor Limits Shall Be Defined as Follows:

New York Side—Battery to 125th Street,
New Jersey Side—National Storage Docks,
Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York Side—Battery to 125th Street, Harlem River, including Harlem River side of Ward's and Randall's Island.

Brooklyn Side—From Pot Cove, Astoria, to and including 69th Street, South Brooklyn (Bay Ridge), points in Newtown Creek, points in Dutch Kills Creek and points in Wallabout Canal. Will not include points in Gowanus Canal except points south of the Hamilton Avenue Bridge.

Staten Island—As far as and including American Docks and Pouch Terminal.

The Lightermen shall be responsible for the number of packages or weight of material for which they give receipt, and shall not receive credit for any overages as these overages belong to the Shipper.

[fol. 141] *Period:* This agreement shall begin September 22, 1941, and shall remain in effect until September 22, 1942. Unless either party notifies the other ninety (90) days prior to September 22, 1942, the contract shall continue subject to a ninety (90) day cancellation on the part of either party after any given business day.

Boats: The Lightermen agree to furnish only approved, seaworthy boats, with proper pumps, to be properly manned for this service, satisfactory to the Companies with whom Shippers carry Marine Insurance, and the Shippers shall have the right to refuse to load any craft apparently unseaworthy, and the Lightermen shall bear all expenses occa-

sioned by unseaworthy craft. The Lightermen agree to use deck lighters for this work, except in cases where permission from the Shippers is previously obtained in writing.

Demurrage: The Lightermen agree to allow the Shippers twenty-four (24) hours free time for each — tons or part thereof on a lighter; provided, however, that when two or more lighters are delivered at the same time, twenty-four hours free time will be allowed for each — tons or part thereof per lighter. In computing free time, Sundays and legal holidays will be excluded. The Lightermen will telephone the Shippers' plant in the afternoon of each day, advising the names and cargoes of lighters in tow that night. When such tow arrives at the plant before 7:00 A. M., free time shall start at 7:00 A. M., on that day; when the tow arrives after 7:00 A. M., free time shall start at 1:00 P. M., and when the tow arrives later than 1:00 P. M., free time shall start at 7:00 A. M., on the following day. After the expiration of the free time, demurrage shall be payable at the rate of $18.00 per boat per twenty four hour day, including Sundays and Holidays. Where the delivery is withheld upon the orders of the Shippers, they shall be responsible for any demurrage accruing by reason of such orders. [fol. 142] When lighters are delayed unduly at the loading point for reasons attributable to the Shippers, demurrage shall be charged.

Insurance: The Shippers will, at their (the Shipper's) expense, carry Marine Insurance on all of their cargo handled. The Lightermen will, at their (the Lightermen's) expense, carry insurance to cover their (the Lightermen's) legal liability. The Lightermen agree to stow all cargoes in a manner satisfactory to the Company or Companies with whom the Shippers insure. The Lightermen shall be responsible for loss by theft while material is on barges or otherwise in their care, and in case of such loss, shall pay the full value of such lost material. Lightermen shall also be responsible for material while on barges at dock at Carteret.

Dispatch: This work shall be considered express business and the Lightermen agree to place lighters alongside the steamers in New York and move loaded boats to Carteret and to move loaded boats from Carteret to New York as required; ice and weather permitting. The Lightermen agree to avoid any unnecessary delays in handling ship-

ments, especially in handling consignments of material from incoming vessels.

Payments: Payments are to be calculated on Refinery weights and bills are payable as soon as weights have been ascertained.

Stevedoring: Stevedoring at Carteret shall be done by Shipper at their own expense, but Lightermen agree to facilitate the unloading at Carteret by stowing loads and maintaining integrity of lots in New York in such a way that they can be handled readily by the Shippers' crane at the Carteret Dock, and in case Lightermen through negligence have failed to so stow the load, they agree to pay any additional expense which the shippers may incur by reason of such improper stowing of loads.

[fol. 143] Lightermen shall receipt for and take receipt for all cargoes and shall be responsible for any shortage in count shown by comparison of such receipts.

Except as otherwise herein provided, stevedoring shall be performed at one end free of expense to Lightermen.

When cargo must be discharged to or loaded from piers through no fault of the Lightermen, the additional labor costs involved are to be charged to the Shipper.

Strikes, Etc.: The parties hereto will be relieved of responsibility for delays arising from strikes, or other causes whether or not herein enumerated, beyond their control, provided, however, that if the Lightermen shall for any of the above mentioned reasons be excused from carrying out their obligations under this Agreement, the Shippers shall be entitled to make arrangements with other parties for the lighterage of their materials.

Adjustments: If charter hire of scows or labor costs increase materially within the duration of this contract, it is understood that the shipper shall upon request of the Lightermen consider an adjustment of rates.

United States Metals Refining Company, —— ——, Secretary; The American Metal Company, Limited, —— ——, Secretary; McAllister Brothers, Incorporated, —— ——, Secretary; McAllister Lighterage Line, Inc., —— ——, Secretary.

[fol. 144] July 20, 1942.

Memorandum to Assistant Director Girault:

Subject: McAllister Lighterage Line, Inc., 17 State St., New York City, Docket W-81.

I called at the office of the above applicant on July 16, 1942, in order to secure more information regarding an operation they were performing as outlined in their letter to this bureau under date of May 1, 1942.

An examination of their records disclosed that on April 21, 1942, the applicant towed a derrick barge with salvage equipment from New York Harbor to Sandwich, Mass., and return, for Merritt, Chapman and Scott Corp. On April 26, 1942, the applicant towed a derrick barge with salvage equipment from New York Harbor to Block Island Sound to assist a ship called the "Empire Dunlin" which was on the rocks. The ship and derrick were towed back to New York. This work was performed for Merritt, Chapman and Scott Corp.

This work was all performed on a per day basis.

H. E. Woods, Special Agent.

[fols. 145-147] Report and Order of Commission, July 28, 1942, omitted. Printed side page 17, ante.

[fol. 148] McAllister Lighterage Line, Inc., 17 State Street, New York

Derrick Barges, Covered Barges, Scows, Tugs, Heavy Lifting, Derricks, Vessel Property, For Sale or Charter, Towing Anywhere.

August 25, 1942.

Mr. W. P. Bartel, Secretary, Interstate Commerce Commission, Washington, D. C.

Re: #W-81 and #W-217
McAllister Lighterage Line, Inc.
McAllister Brothers Inc.

Dear Sir:

This will acknowledge receipt of written decision of the Commission denying the application of McAllister Lighterage Line, Inc. for Contract Carrier permit and dismissing the application of McAllister Brothers Inc. for Contract Carrier permit. We wish to formally protest said opinions and respectfully request a rehearing or reexamination into the facts and background of the two above mentioned companies which we feel will substantiate our contention that said companies are entitled to operate as Contract Carriers. During the informal examination of the above companies' Offices by representatives of the Interstate Commerce Commission, it was established that McAllister Brothers, a partnership, had actively participated in the marine transportation business since 1864.

Purely for the purposes of liability, McAllister Brothers partnership was incorporated into McAllister Brothers Inc. in the year 1936. In 1938, McAllister Lighterage Line, Inc. for liability purposes undertook the operation of all of the McAllister Brothers vessels.

It has been the policy of McAllister Brothers since its inception in 1864 to hold itself out to operate all types of marine transportation equipment, coastal towboats, ocean-going tankers, deep sea salvage equipment and package freighters without any limitation as to cargo carried or routes traversed. Not only the founders of the present corporations, but present members, thereof, have owned and operated all sizes and types of ocean-going vessels as late as 1926. This company operated up to forty ocean-going tankers running to all parts of the world. Coastal and ocean

going tugs have always been held ready and in commission for work at all times.

[fol. 149] A package freight line was owned and maintained by this company between New York and Philadelphia with transshipments to Baltimore via the Delaware and Raritan Canal until its closing.

The depression and the present war effort has limited the scope of "McAllister" to operations within New York Harbor. This fact is established and evidenced by the type of lighterage and towing that this company is participating in at the present time; namely the lighterage of explosives within New York Harbor for the U. S. Government and lighterage of copper and lead in all forms for many of the metal companies, also within the harbor area.

This company, however, at all times has held itself out to be absolutely flexible in its towage and lighterage operations and has so advertised. To deny "Grandfather rights" to a company with such a historical background, one of the oldest in New York harbor, is most inequitable and constitutes a denial to this company to continue its operations in a field of endeavor which four generations of family have developed. The entire McAllister fleet consisting of approximately seventy vessels is presently active in New York Harbor on defense business. At the termination of the war, such activity will cease within the limits of New York harbor and this company must again be in a position to take up its flexible operations in marine trade; and not be limited to the confines of New York harbor.

This company has recently acquired three ocean-going tugs and two coast wise barges. It is the desire and intention of this company to operate these vessels in coast wise trade in the near future.

It is submitted that the language of the commission's decision is based on a misconception of the facts and historical background of this company. It is requested that the Commission reconsider its decisions in these matters and provide the undersigned an opportunity to clarify the facts already submitted in the petition for a permit. It is submitted that partically at least the Commission's decision is contrary to the facts and completely disregards the historical background and present policies of the undersigned companies. The within petition for rehearing or reexamination into the facts is made prior to September 7th, 1942.

the effective date of the Commission's decision on the above said applications.

Respectfully submitted, McAllister Lighterage Line, Inc. By Gerard M. McAllister, Counsellor, per D. S. McAllister Brothers, Inc. By Gerard M. McAllister, Counsellor, per D. S.

[fol. 150] INTERSTATE COMMERCE COMMISSION

No. W-81

MCALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

MCALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

Present: Charles D. Mahaffie, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER

Upon further consideration of the record in the above-entitled matters; and good cause appearing:

It is ordered, That the effective date of the denial and dismissal order issued on July 28, 1942, which by its terms is to take effect and be in force from and after September 7, 1942, be, and it is hereby, postponed to October 15, 1942.

Dated at Washington, D. C., this 3rd day of September A. D. 1942.

By the Commission, Commissioner Mahaffie.

W. P. Bartel, Secretary. (Seal.)

[fol. 151] INTERSTATE COMMERCE COMMISSION

No. W-81

McALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

McALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

PETITION FOR RECONSIDERATION OR FORMAL HEARING AND FOR EXTENSION OF EFFECTIVE DATE OF ORDER

The undersigned petitions, in accordance with Rule 101 of the General Rules of Practice before the Commission, to reconsider its written decisions dated July 28, 1942, with respect to the above matters or for a formal hearing on the applications on file herein.

An extension of the effective date of the above described orders and decisions from October 15, 1942 to such date as is required for a reconsideration or formal hearing is requested.

The grounds upon which reconsideration is sort herein are as follows:

The written decisions handed down by the Commission were based only upon an informal conference between representatives of the Commission and representatives of the Company in which the historical background and length of activity of Companies involved and type of activities participated in were not properly presented or brought to light.

That although McAllister Brothers has been in existence since 1864 in the General Marine Transportation Trade and has been operated by four generations of McAllister family, grandfather rights were denied to the said Company. Insufficient and improper facts were obviously submitted to the Commission which served as the basis of their decisions denying and dismissing the within applications.

It is respectfully urged that a formal hearing be granted so that an opportunity will be presented for the presentation of the proper and true evidence to substantiate the applications for a Contract Carrier's Permit or Common Carrier's Certificate.

The evidence to be submitted on a formal hearing to which the Companies involved are entitled will substantiate that

McAllister is one of the oldest firms operating out of New York Harbor, that it presently owns and operates over 100 vessels of various types, including barges, both inland and seagoing, lighters--self-propelled and non-self-propelled, derricks, towboats, both of inland type and coastal type. [fol. 152] The evidence will further disclose that for the past 75 years, McAllister has owned and operated at various times a fleet consisting of approximately 40 ocean going tankers, running to all parts of the globe for the U. S. Government.

That it has owned or operated coastwise salvage equipment of all types and sizes.

That it has owned or operated seagoing tugs running between Cuba and this country.

That it has owned or operated a package freight line between New York and Philadelphia by the inland canal.

That it has owned or operated schooners and trawlers operating between various coastal ports and the West Indies.

That it was not until the days of deep economic depression, followed by the present war effort, that McAllister has been confined mainly to harbor operations.

That McAllister has, even during this period, made runs down Long Island Sound and the New Jersey Coast and has always held itself out and so advertised that it would tow anything anywhere at any time.

It was not the intention of Congress, nor within the purview of the governing statute to deny grandfather rights to a concern with such a heritige and present and planned widespread marine activities.

Only reasons beyond its control (see recent Luckenbach Steamship Decision) has limited the activities of McAllister to its curtailed service as of January 1st, 1940.

All of the activities of the Carrier, exempt along with the non-exempt, must be considered in the granting of grandfather rights (see Russell Brothers Towing Co. Inc. Decision August 12, 1942, No. W-385); although a majority of the Carrier's operations are exempt under the Act, a Certificate will be granted covering a small portion of the non-exempt transportation (see Pontin Lighterage and Transportation Corporation's Decision August 17, 1942, No. W-653).

For the above reasons and in view of the fact that the Commission did not have complete and proper evidence be-

fore it at the time of the rendering of its decisions and in view of the fact that the Companies involved were not given a formal hearing to produce its evidence substantiating these applications,

It is respectfully requested that the within petition be granted.

McAllister Brothers, Inc. by —— ——. McAllister
Lighterage Line, Inc. by William H. McAllister.

New York, N. Y., September 25, 1942

[fol. 153] INTERSTATE COMMERCE COMMISSION

No. W-81

MCALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

MCALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

IN THE MATTER OF THAT PART OF APPLICANTS' PETITION FOR POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER

ORDER

Upon further consideration of the records in the above-entitled proceedings, and upon consideration of that part of applicant's petition for postponement of the effective date of the order:

It is ordered, That the order entered in the above-entitled proceedings on July 28, 1942, which was subsequently modified to become effective on October 15, 1942, be, and it is hereby, further modified to become effective December 1, 1942, instead of October 15, 1942.

Dated at Washington, D. C., this 2nd day of October, 1942.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal.)

[fol. 154] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of October A. D. 1942.

No. W-81

McAllister Lighterage Line, Inc. Contract Carrier Application

No. W-217

McAllister Brothers, Inc. Contract Carrier Application

Order

Upon consideration of the record in the above-entitled proceeding, of petition of applicants, dated August 29, 1942, for reconsideration; and good cause appearing:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal)

[fol. 155] Interstate Commerce Commission

No. W-81

McAllister Lighterage Line, Inc. Contract Carrier Application

No. W-217

McAllister Brothers, Inc. Contract Carrier Application

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Order

Upon further consideration of the record in the above-entitled matter, and of request by applicants for leave to file a petition for reconsideration and hearing and for further postponement of the denial and dismissal order of July 28, 1942, which by its terms was to take effect and be

in force from and after September 7, 1942, which effective date was postponed to October 15, 1942, and further postponed to December 1, 1942; and good cause appearing:

It is ordered, That the effective date of said denial and dismissal order be, and it is hereby, further postponed to January 15, 1943.

Dated at Washington, D. C., this 30th day of November A. D. 1942.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal)

[fol. 156] INTERSTATE COMMERCE COMMISSION

No. W-81

MCALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

MCALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

Present: Claude R. Porter, Commissioner, to whom the above entitled matter has been assigned for action thereon.

ORDER

Upon further consideration of the record in the above-entitled matter, and of request by applicants for leave to file a petition for reconsideration and hearing and for further postponement of the denial and dismissal order of July 28, 1942, which by its terms was to take effect and be in force from and after September 7, 1942, which effective date was postponed to October 15, 1942, and further postponed to December 1, 1942, and January 15, 1943; and good cause appearing:

It is ordered, That the effective date of said denial and dismissal order be, and it is hereby, further postponed to March 1, 1943.

Dated at Washington, D. C., this 14th day of January A. D. 1943.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal)

[fol. 157] INTERSTATE COMMERCE COMMISSION

No. W-81

MCALLISTER LIGHTERAGE LINE, INC. CONTRACT CARRIER APPLICATION

No. W-217

MCALLISTER BROTHERS, INC. CONTRACT CARRIER APPLICATION

Present: Claude R. Porter, Commissioner, to whom the above entitled matter has been assigned for action thereon.

ORDER

Upon further consideration of the record in the above-entitled matter, and of request by applicants for leave to file petition for reconsideration and hearing and for further postponement of the denial and dismissal order of July 28, 1942, which by its terms was to take effect and be in force from and after September 7, 1942, which effective date was postponed to October 15, 1942, and further postponed to December 1, 1942, January 15 and March 1, 1943; and good cause appearing:

It is ordered, That the effective date of said denial and dismissal order be, and it is hereby, further postponed to April 1, 1943.

Dated at Washington, D. C., this 24th day of February, A. D. 1943.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal)

[fol. 158] INTERSTATE COMMERCE COMMISSION

IN RE: APPLICATION OF MCALLISTER LIGHTERAGE LINE, INC.

No. W-81

and

MCALLISTER BROTHERS, INC.

No. W-217

Substantiating Data for Reconsideration—Filed March 18, 1943

[fol. 159] [Title omitted]

AFFIDAVIT OF GERARD M. MCALLISTER

STATE OF NEW YORK,
County of New York, ss:

GERARD M. MCALLISTER, being duly sworn, deposes and says:

He is attorney for McAllister Lighterage Line, Inc. the applicant herein.

The annexed affidavit of William H. McAllister, President of McAllister Lighterage Line, Inc. sets forth the history, background, and marine activities of "McAllister."

Your deponent offers in evidence the annexed data in substantiation of the written application:

Exhibit I—Copy of McAllister Lighterage Line, Inc. letterhead with underlined inscription, "Towing Anywhere." This stationery has been in use by the applicant for many years prior to this application. The slogan "Towing Anywhere" appears in black printed letters on the front doors of the offices of "McAllister" at 17 State Street, New York City. The applicant at the present time is carrying on an advertising campaign in such papers as New York Times, New York Herald Tribune, and The Journal of Commerce; as well as several magazines circulated within the trade. A photostatic copy of such advertising is attached herewith. As can be seen these stress the diversification of applicant's operations, as well as being an invitation to the public to use applicant's services.

[fol. 160] Exhibit II—Examples of oceanic, towage and freightage operations engaged in prior to Jan. 1, 1940 and subsequently carried on after that date by the applicant.

Exhibit III—Copy of an article appearing in the November issue of the Marine News on page 39, thereof, which clearly expresses the sentiment behind this application.

Since its inception "McAllister" has held itself out to the industry and the general public as ready, able and willing to engage in any maritime services to the limit of its capacity. These included towing barges, scows, lighters, derricks or any other floating equipment, whether its own, or

belonging to others; chartering vessels from others as well as chartering to others, as the need arose; docking and undocking ships and rendering services of a like nature to anyone who was prepared to pay for them. Among its valued customers are included about 50 shipping and towing companies. The applicant provides motive power for shippers of their own products on their own barges, or barges hired from the applicant It is prepared to use its facilities for transporting any type of non-propelled vessel.

In a large majority of cases the contract is oral, depending in some cases on the time involved, in others the distance between the places to be reached and again in others on the tonnage moved.

There has never been an abandonment by the applicant of any route or run in which it had previously been engaged, and which still showed a fair return on the capital outlay required. True, conditions over which it had no control has curtailed its operations in various waters, as shown in Exhibit II. These included economic depression, competition, and factors which adversely affected the whole industry. [fol. 161] At present its fleet consists of 17 tug boats, 98 scows and barges, one self-propelled lighter, two tankers, two dredges and other non-descript craft. Most are owned by the applicant while others are hired for particular operations.

Applicant's operations would clearly fall within the findings of the Interstate Commerce Commission in the Cornell Steamboat Company Contract Carrier Application, set forth in the following language: "We find that the evidence discloses the fact of a general holding out tempered by prudence, a desire for business rather than a desire to exclude any. We find as a fact that applicant holds itself out to the public to tow for anyone with ability and willingness to pay for the service. Such a holding out, accompanied by performance, in itself constitutes one a common carrier." McAllister's policy meets these conditions.

With regard to the general towage business conducted by "McAllister" there were numerous jobs in which flotillas of three or more barges were in tow. Included in some instances were bulk and non bulk commodities, and frequently there were more than three bulk commodities in the same movement.

"Towing Anywhere" is more than a mere slogan. It has been, and is, a reality.

"McAllister's" varied coastal and oceanic operations prior to 1930 and the curtailment of same through the economic distress period and its present plans to again operate on the coast interrupted only by causes beyond its control, namely the depression and now its 100% war efforts established beyond doubt the elasticity of "McAllister" operations and its reputation and character as a Marine Transportation Company, in towing and transportation service, [fol. 162] not only within New York Harbor and its tributaries, but to points along the Hudson River, Long Island Sound, and the Atlantic Coast, from Maine to Florida.

It is respectfully submitted that the Commission reconsider its decision dismissing "McAllisters" application for a common Carrier Certificate or in the alternative a Private Contract Carrier Permit and/or grant a formal hearing on such application.

Gerard M. McAllister.

Sworn to before me this 15th day of March, 1943. Edward J. Hennessey, Notary Public, Kings Co. No. 106, New York County No. 784. Commission Expires March 30, 1944.

[fol. 163] INTERSTATE COMMERCE COMMISSION

[Title omitted]

AFFIDAVIT AND SUBSTANTIATING DATA SUBMITTED IN SUPPORT OF APPLICATION FOR RECONSIDERATION OF COMMISSION'S DECISION, DATED JULY 28, 1942, OR FOR A FORMAL HEARING OF SAID APPLICATIONS

STATE OF NEW YORK,
County of New York, ss:

WILLIAM H. MCALLISTER, being duly sworn, deposes and says:

I reside at 676 E. 18th Street, Brooklyn, New York.

I am President of McAllister Lighterage Line, Inc., the applicant herein.

McAllister Lighterage Line, is a New York Corporation, with offices for the transaction of business at 17 State Street, Borough of Manhattan, City of New York.

Applicant has been engaged in varied phases of maritime operations since its inception in 1864. Throughout its long career it has continuously been owned by the founder and later by his descendants.

The corporate set-up existing at the present time consists of McAllister Brothers Inc., which charters all of its marine equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. [fol. 164] It has always been "McAllister's" policy to remain as elastic as possible in the marine field, that is, to purchase and operate any type of marine equipment over any waters, as the opportunity arose. At all times it has maintained at least two or three vessels licensed for coastal operations, being constantly alert for any attractive coastal towage operation which might present itself. "McAllister" has always held itself out to the trade and the public as ready willing and able to participate in this transportation field at any time. (see exhibit #I)

Many of the tugs which have been owned and operated by McAllister over the past five or ten years have been licensed for coastal waters. Of Allister's present fleet of approximately 100 vessels, either owned or chartered, the following tugs are in this classification: Catherine McAllister, W. H. McAllister, James McAllister, Isabel A. McAllister, G. M. McAllister, Neptune, Lenape and Valley Forge. The latter two coastal tugs were bought in 1941 and the purchase included two 2500 ton ocean going barges. "McAllister" planned the institution of a regular coastal trade. However, the U. S. Government has since requisitioned and taken possession of the Lenape and Valley Forge through its agency, the War Shipping Administration. This latter body has since allocated to McAllister the Port Clinton, and the Port Henry, two new diesel government owned tugs, one of which is a coastal type. McAllister is to act as general agents for the United States in the operation of these boats. More of these vessels are anticipated in the near future, under similar arrangement. These tugs are expected to be crewed and equipped for any emergency towing on the sounds, rivers and coasts in this area. They are presently in operation.

[fol. 165] The other activities carried on included ocean-going operations, harbor towing, freighting, salvage, fishing, chartering, passenger excursions, managing or operating for other companies. A few examples of these include a general barge and towing service conducted during the early 1900's thru 1914 between Cuba, New Orleans and other east coast ports. The ocean-going tug C. W. Morse was the key vessel. In 1920 with the trawlers, Foam, Ripple and Spray, salvage operations were conducted for a considerable period between New York and Norfolk, Virginia. In 1922 the S. S. Augusta was purchased for ocean trading.

From the years 1919 to 1926 McAllister operated for and on behalf of the U. S. Shipping Board, a fleet of 43 ocean-going tankers, running to all parts of the world. This operation was highly successful as government records will establish. The allotment of these vessels to McAllister was based upon the versatile and elastic experience possessed by those operating the company. When the agency ended "McAllister" made substantial bids for some of these vessels, but was unsuccessful. They would have been used in tanker operations for "McAllister's" own account.

In the years 1931 through 1933 a Philadelphia and New York freight packet line was instituted. A regular schedule was maintained by McAllister via the Delaware and Raritan Canal with freight delivered as far as Baltimore, Wilmington and Norfolk, Virginia by transhipments. This line consisted of two propelled cargo vessels, a tug and barges. A general line of commodities was carried. This operation continued until the Canal was closed by its owners.

[flo. 166] 1930 through 1939, the years of deep economic depression, affected McAllister and its operations considerably. At times it was limited to the operation of one or two tug boats and a few inland scows and lighters. The territory serviced was markedly limited, namely, to New York Harbor and its tributaries, with a few occasional jobs down the Sound, up the Hudson River and short distances on the Atlantic Coast. This limitation in activity was beyond the control of McAllister and certainly not the normal type of marine activity participated in by McAllister.

During our present World War II efforts, and in the years 1939, 1940 and 1941 McAllister obtained large War contracts from the U. S. Government for the transhipment of explosives and ammunition within the confines of New

York Harbor. There has also been a tremendous increase in the lighterage of copper, lead and other heavy metals, in which trade "McAllister" has specialized. In the years 1938 to 1942 operations in these metals approximated 1,000,000 tons. The docking and undocketing of trans-oceanic vessels in New York Harbor has increased materially. Thus, all McAllister's available marine equipment in the last two years has been utilized in the carrying out of these essential war efforts and has again been limited to the confines of New York Harbor and tributaries. This limitation in activity was certainly beyond the control of "McAllister" and for that reason "McAllister" should not now be penalized by a denial of "Grandfather Rights".

In spite of such limitations in service as were caused by the depression and now by the war effort, McAllister can present a picture of numerous operations outside of Harbor limits and otherwise non-exempt services. (See Schedules.) This Company has not abandoned any established routes but on the contrary has always held itself out to "tow anything, anywhere".

[fol. 167] Recently the Office of Price Administration, a U. S. Government Agency, has held by written decision "McAllister Lighterage Line, Inc." to be a common carrier within the purview of the related act. The evidence submitted by "McAllister" in obtaining such a decision and the test applied by the Office of Price Administration in determining "McAllister" to be a common carrier was very similar to the instant test applied, as evidenced by written decisions of the Interstate Commerce Commission in determining the status of carriers.

The present "McAllister" fleet, comprised of approximately 15-20 towboats, both coastal and inland type; approximately 50 scows, barges, lighters, and derricks and 40 to 50 chartered scows, lighters, and derricks, represents a material investment in dollars.

A decision by the Interstate Commerce Commission dismissing the applications of "McAllister" for a Common Carrier Certificate or in the alternative a Contract Carrier Permit would result in the confinement of McAllister to operations only within confines of New York Harbor and tributaries and would result in a practical confiscation of its property with respect to any other type of marine transportation in other waters. Not only the numerous cus-

tomers served by McAllister but the general public would be deprived of the use of this applicant's valuable fleet and elastic services.

It was not within the purview of Congress in passing the Interstate Commerce Act to deprive an applicant with the history, background and record of operations as your petitioner from its inherent rights to "Grandfather privileges."

"McAllister" should not be penalized by limitation of its normal activities by a world-wide depression and presently its considerable efforts in the defense of our country.

[fol. 168] It is respectfully requested that the Commission reconsider its decision dismissing the applications of "McAllister" and/or grant a formal hearing of such applications, or in the alternative, at least to grant to the appliant a contract carriers permit covering operations not only in New York Harbor and tributaries, but Hudson River, to Troy, Long Island Sound and Atlantic Coast from Eastport, Maine to Florida and Gulf ports.

William H. McAllister, Pres.

Sworn to before me this 15th day of March 1943. Edward J. Hennessey, Notary Public, Kings Co. No. 106, New York County No. 784. Commission expires March 30, 1944. (Seal.)

[fol. 169] Interstate Commerce Commission

[Title omitted]

Affidavit and Substantiating Data Submitted in Support of Application for Reconsideration of Commission's Decision, Dated July 28, 1942, or for a Formal Hearing of Said Applications

State of New York,
County of New York, ss:

James P. McAllister, being duly sworn, deposes and says:

I reside at 940 Albermarle Road, Brooklyn, New York.

I am Vice-President of McAllister Lighterage Line, Inc., the applicant herein.

McAllister Lighterage Line, Inc. is a New York Corporation, with offices for the transaction of business at 17 State Street, Borough of Manhattan, City of New York.

For many years, the greatest portion of towing on the coast has been done by a few large coal transportation companies operating out of Baltimore, Norfolk and Philadelphia. These companies took coal East as far as Maine and brought back granite and scrap. There was some towing of southern pine from southern ports to various points along the coast.

Of recent years, a certain amount of oil towing has de- [fol. 170] veloped between various ports along the coast. This towing in itself is exempt under the Water Transportation Act; in fact the amount of towing on the coast for many years back that would come under the Act, is negligible. There has always been some towing in and out of the various ports to nearby points which has fluctuated with the times and circumstances. The greates portion of this towing also is exempt under the Act. It is, therefore, evident that any towing coming under the Act would have to be done by towing companies which in themselves would find it very difficult to prove a history of non-exempt towing.

The aforementioned southern towing companies were able, because of a great differential in wages and other costs, to quote rates far below any towing companies in New York or other points East. This company because of this competition has been unable for years to obtain any properly compensatory work on the coast. However, it has always held itself out for any towing that may develop, and at additional expense, has always had tugs licensed for this towing.

The Commission in the recent cases of Moran Towing and Russell Brothers, Inc., has granted these applicants certificates to operate and tow on the coast and Great Lake Regions even though said applicants have materially performed only exempt towage and service in said areas.

This amount of exempt towage establishes without contradiction that a general towage business of non exempt commodities on the coast was practically non existent. Some of the companies which have been granted certificates to tow on the coast by the Commission have only developed such operations over the past few years, and therefore, must be considered newcomers to the field. "McAllister's" his-

tory shows that it has both operated and held itself out to operate on the coast off and on for over fifty years, and therefore should have a much stronger case in establishing its rights to continue such operations at this time.

[fol. 171] In view of the fact that the Commission has seen fit to grant Common Carrier Certificates to companies which have only in recent years done exempt coastal towing, it would seem unfair to an old established company which has proven itself flexible and able to adjust itself to conditions as they developed in its business. By failing to grant our application, it may deprive this company in the near future from participating in towing which may mean its very life.

James P. McAllister, V. P.

Sworn to before me this 15th day of March, 1943. Edward J. Hennessey, Notary Public, Kings Co. No. 106, New York County No. 784. Commission Expires March 30, 1944.

(Here follow 2 Photolithographs, side folios 172-173, 174)

EXHIBIT 1

McALLISTER LIGHTERAGE LINE, Inc.

17 STATE STREET

NEW YORK

Cable Address
"McAlister"

Telephone
BOwling Green
9-5470

DERRICK BARGES
COVERED BARGES
SCOWS
TUGS
HEAVY LIFTING
DERRICKS
VESSEL PROPERTY
FOR SALE OR
CHARTER
TOWING ANYWHERE

The Fleet's OUT!

McALLISTER harbor and coastal tugs, derricks, self-

MILLIONS IN METALS

DISPATCHERS
On Duty!

The Fleet's OUT!

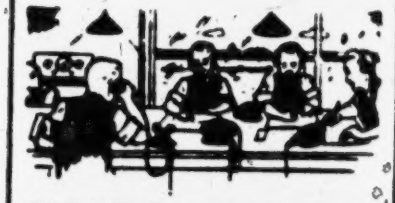
McALLISTER harbor and coastal tugs, derricks, self-propelled lighters, lighters and scows are working day and night, as in World War I. These dependable vessels and their experienced crews are at the service of firms requiring war essential marine towing and transportation.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE

MILLIONS IN METALS

The McAllister Lighterage Line, Inc., have long been noted for their experienced handling of heavy valuable cargoes in metal. Though demands have multiplied, especially adapted McAllister tugs, lighters and scows, are available for essential transporting assignments.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE

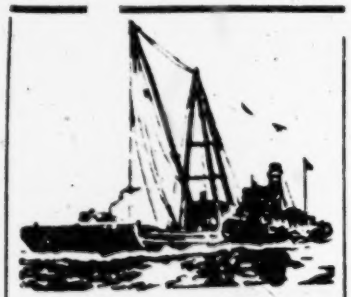


DISPATCHERS On Duty!

DIRECTING the multiplied assignments of McALLISTER harbor and coastal tugs, derricks, self-propelled lighters, lighters and scows, is a top-flight dispatching staff. Day and night radiophone dispatching controls these vessels with railroad-like accuracy. This time saving, work speeding service may be utilized by businesses requiring "essential" towing and transportation.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE

HTWO 90595—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise



HEAVY LOADS . . .

COMPRISING the extensive McALLISTER Fleet are harbor and coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows especially adapted for handling and transporting heavy, valuable commodities.

These vessels are at the disposal of operators and shippers for essential wartime transportation.

McALLISTER

TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

17 State Street • New York City

HTWO 90597—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

ECONOMICAL FUEL TRANSPORTATION

INCREASED demands for wartime fuel transportation have multiplied the mileages of McALLISTER lighters, tugs and self propelled tankers. McALLISTER vessels in these categories are available as a most economical means of handling bulk oil shipments in the all-out war effort.

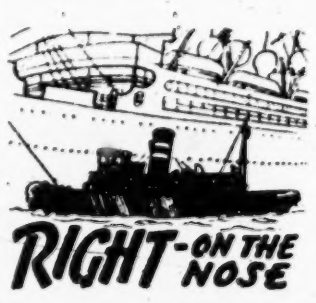
McALLISTER

TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

17 State Street • New York City

HTWO 90596—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise



HTWO 6?032—6 pfs. to LaPorte & Austin—1-23-43—x1—ORIG

McA

HIGH ON THE HALYARD OF TOWING ACHIEVEMENTS!

A number of McALLISTER vessels are now devoted to towing and transportation in active wartime service. Nevertheless we *do* provide prompt and efficient service for shippers and ship operators with our harbor and coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows for any assignment essential to the war effort.

McALLISTER

TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

17 State Street • New York City

OPEN HATCHES

WITH their customary

★N★

HTWO 74009—6 pfs. La Porte & Austin 2-10-'43—x1—Original

McALLISTER

ers, lighters, covered barges and scows especially adapted for handling and transporting heavy, valuable commodities.

These vessels are at the disposal of operators and shippers for essential wartime transportation.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

HTWO 90595—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

OPEN HATCHES

WITH their customary speed and efficiency, McALLISTER tugs and lighters are continually transporting valuable cargoes alongside ocean going ships. Arrangements for such dependable day and night service in the interests of the war effort, can be made through this office.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

PROOFS FROM
New York Herald Tribune
PLEASE READ ENTIRE PROOF

in active wartime service. Nevertheless we *do* provide prompt and efficient service for shippers and ship operators with our harbor and coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows for any assignment essential to the war effort.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

★N★
HTWO 74009—6 pfs. La Porte & Austin 2-10-'43—x1—Original

McALLISTER

FOR TOWING JOBS

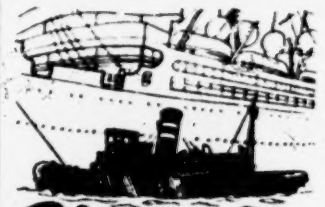
THE familiar red stack with two white bands on every McALLISTER tug has for three-quarters of a century constituted a symbol for tough towing jobs well done. This is why McALLISTER repeatedly gets assignments where the work and responsibilities are heavy and where time is at a premium.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

mands for wartime fuel transportation have multiplied the mileages of McALLISTER lighters, tugs and self propelled tankers. McALLISTER vessels in these categories are available as a most economical means of handling bulk oil shipments in the all-out war effort.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

HTWO 90596—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise



RIGHT-ON-THE NOSE

QUICK, efficient docking and undocking of ocean going ships is a service developed by McALLISTER tug captains and crews through years of peacetime experience. This service is now at the disposal of war-rushed operators in the interests of substantial time savings.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

1128

. 175)

EXHIBIT II

Page 1

Oceanic Runs

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1919 to December 31, 1927**					
Hisko (Barge in tow)		Constable Hook	Tompkinsville	U. S. Shipping Board, N Y C.		3			11/19/19–2/ 7/20
		Tompkinsville	Brest						
Hadnot		Brest	New York, N. Y.						
			New Orleans, La.						10/25/19–1/ 4/20
		Boston, Mass.	Cienfugos						
		New Orleans, La.	Puerto Padre			7			
		New Orleans, La.	Antilla						
		New Orleans, La.	*Tuxpam*						
Wilhelm Jebsen	Crude	New York, N. Y.	Tuxpam						12/5/19–3/27/20
		Tuxpam	Constable Hook						
		New York, N. Y.	Palo Blanceo			4			
		Palo Blanceo	Tuxpam						
Dannedaike		Baltimore, Md.	San Juan						
		San Juan	New York, N. Y.			6			12/13/19–12/17/20
		New York, N. Y.	Antilla						
		Antilla	New Orleans, La.						
		New Orleans, La.	Cienfuegos						
		Cienfuegos	Mobile						
Hagood	Kerosine	Baltimore, Md.	Paulsboro, N. J.			6			
		Paulsboro, N. J.	Marcus Hook						
		Marcus Hook	Fayal						
		Fayal	Gibraltar						1/ 2/20–3/12/20
		Gibraltar	Alexandria						
		Alexandria	New York, N. Y.						
Hisko	Crude	Tampico	Phila., Pa.	Atlantic Refining Company		1			3/24/20–4/ 5/20
Hugenot	Crude	Baton Rouge	Baytown			4		9196	12/ 2/21–1/23/22
		Texas City	New York, N. Y.						
		Baton Rouge	Baytown						
		Galveston	New York, N. Y.						
		Baltimore, Md.	Mata Redonda						
		Mata Redonda	Baton Rouge						
aldbutte	Crude	New Orleans, La.	Tampico						
		Tampico	Phila., Pa.						
		Phila., Pa.	Pensacola						1924
		Pensacola	St. Thomas						
		Pensacola	Puerto Delgada						
ity of Freeport	Molasses	New York, N. Y.	Macoris						
		Macoris	San Juan						1922
		San Juan	Piraeus						
		Piraeus	New Orleans, La.						
evolente	Crude	Mobile	Tuxpam						
		Tuxpam	Port Arthur						
		Port Arthur	Tampico						
		Tampico	New York, N. Y.						1922
		Port Arthur	Galveston						
ummae	Molasses	Mobile	Cienfuegos						1922

*Wilhelm Jebsen	Crude	New York, N. Y.	Tuxpam	"
		Tuxpam	Constable Hook	
		New York, N. Y.	Palo Blanceo	
*Danniedaike		Palo Blanceo	Tuxpam	
		Baltimore, Md.	San Juan	"
		San Juan	New York, N. Y.	
		New York, N. Y.	Antilla	
		Antilla	New Orleans, La.	
		New Orleans, La.	Cienfuegos	
		Cienfuegos	Mobile	
*Hagood	Kerosine	Baltimore, Md.	Paulsboro, N. J.	"
		Paulsboro, N. J.	Marcus Hook	
		Marcus Hook	Fayal	
		Fayal	Gibraltar	
		Gibraltar	Alexandria	
		Alexandria	New York, N. Y.	
*Hisko	Crude	Tampico	Phila., Pa.	Atlantic Refining Company
*Hugenot	Crude	Baton Rouge	Baytown	
		Texas City	New York, N. Y.	
		Baton Rouge	Baytown	
		Galveston	New York, N. Y.	
		Baltimore, Md.	Mata Redonda	
*Baldbutte	Crude	Mata Redonda	Baton Rouge	
		New Orleans, La.	Tampico	
		Tampico	Phila., Pa.	
		Phila., Pa.	Pensacola	
		Pensacola	St. Thomas	
		Pensacola	Puerto Delgada	
*City of Freeport	Molasses	New York, N. Y.	Macoris	
		Macoris	San Juan	
		San Juan	Piraeus	
		Piraeus	New Orleans, La.	
*Devolente	Crude	Mobile	Tuxpam	
		Tuxpam	Port Arthur	
		Port Arthur	Tampico	
		Tampico	New York, N. Y.	
		Port Arthur	Galveston	
*Hammac	Molasses	Mobile	Cienfuegos	
*Houma	Fuel Oil	Galveston	New York, N. Y.	
*Habatonka	Crude	Pensacola	San Pedro	
*Halo	Crude	Pensacola	Tampico	
*Houma	"	New York, N. Y.	San Pedro	
*Hoxbar	Oil	New York, N. Y.	San Pedro	
*Imlay	"	Cristobal	New York, N. Y.	
*Kekoskee	"	Pensacola	Baton Rouge	
*Danville	Fuel Oil	New Orleans, La.	Pensacola	
		Pensacola	Puerto Padre	
*Darden	Crude	Mobile	Texas City	
		Texas City	New York, N. Y.	
		Texas City	Baltimore, Md.	
		Tampico	Port Arthur	
		Tampico	Galveston	
*Hagan	"	Fall River	Pasadena, Tex.	
		Pasadena	Phila., Pa.	
		Phila., Pa.	Avondale	
		Baltimore, Md.	New Orleans	
*Hovan	Fuel Oil	San Pedro	Baltimore, Md.	
*Manatawny	Crude	Marcus Hook	Baltimore, Md.	
		Marcus Hook	Port Arkansas	
*Tuxpanoil	Oil	Baltimore, Md.	Beaumont	
*Baldhill	Oil	Phila., Pa.	Providence	
		Providence	Tampico	
*Cecil County	Oil	New York, N. Y.	Galveston	
		Baytown	Baltimore, Md.	
*District of Columbia	Oil	New York, N. Y.	Tampico	
		Tampico	Boston	
*Baldbutte	Oil	San Pedro	Honolulu	
*Darden	Oil	Jacksonville	Tampico	

Vessels owned by applicant.

* Vessels under charter to applicant.

** These examples represent but a few of the very numerous voyages engaged in by applicant.

Towing

Interstate Commerce Commission
Washington

All Towing Performed by Applicant's Tugs

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper-Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1933 to December 31, 1933					
*Argo		Rockyhill, Conn.	Carteret, N. J.	S. S. Brannigan	1/ 3/33	1	Oral		Trip
#W. H. McAllister with dumpers	Constr. Fill			Bouker Contracting Co., N.Y.C.	4/30/31				
#McAllister Bros. with dumpers	"	Carteret, N. J.	Rockyhill, Conn.	Simpson Spence & Young	1/ 4/33	1	"		12/31/32-1/ 4/33
*Barge #94	"	Glen Cove, N. Y.	Port Morris, N. Y.	Bouker Contracting Co., N.Y.C.	1/ 7/33	1	"		Trip
*Bouker #66	"	Glenwood, N. Y.	Glen Cove, N. Y.	"	1/ 7/33	1	"		"
*Barge K	"	Fort Morris	Great Neck	"	1/ 7/33	1	"		"
*Bouker #66	"	Glen Cove, N. Y.	Port Morris	"	1/ 7/33	1	"		"
*Bouker #84	"	Glen Cove, N. Y.	Port Morris	"	1/ 7/33	1	"		"
*S. F. E. #500	"	Brooklyn, N. Y.	Staten Island	"	1/ 7/33	1	"		"
*Agnes Dempsey	"	New York, N. Y.	Staten Island	"	1/ 7/33	1	"		"
*Barge #64 H	"	New York, N. Y.	Staten Island	"	1/ 7/33	1	"		"
*Ceres	"	New York, N. Y.	Staten Island	"	1/ 7/33	1	"		"
*S. F. E. #505	"	New York, N. Y.	Staten Island	"	1/ 7/33	1	"		"
*S. F. E. #155	"	Brooklyn, N. Y.	New York, N. Y.	"	1/ 7/33	1	"		"
*Bouker #62	"	Pier 1	Pier 92	"	1/ 7/33	1	"		"
*Bouker #88	"	Yonkers, N. Y.	New York, N. Y.	"	1/ 7/33	1	"		"
*Bouker #76 H	"	Gravesend	Greenville	"	1/ 7/33	1	"		"
*Bouker #76	"	Greenville	Pt. Liberty	"	1/ 7/33	1	"		"
*Bouker #76 H	"	Coaling	Pt. Liberty	"	1/ 7/33	1	"		"
*Bouker #76 H	"	Pt. Liberty	Pier 1	"	1/ 7/33	1	"		"
*Bouker #50	Fill	Gravesend Bay	East Rockway	"	4/ 6/33	1	"		"
*Bouker #102	"	East Rockway	Staten Island	"	4/ 6/33	1	"		"
*Barge Beaver	Fuel	Staten Island	Roseton, N. Y.	Gulf Refining Company	5/31/33	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	Bouker Contracting Co., N.Y.C.	8/18/33	1	"		"
*Bouker #56	Fill	New York, N. Y.	East Rockway	"	8/19/33	1	"		"
*Bouker #101	"	New York, N. Y.	East Rockway	"	8/19/33	1	"		"
*Bouker #102	"	East Rockway	New York, N. Y.	"	8/19/33	1	"		"
*Bouker #104	"	East Rockway	New York, N. Y.	"	8/19/33	1	"		"
*Bouker #63	"	East Rockway	Rockway Point	"	8/19/33	1	"		"
*Seaboard #37	"	Mouth of Creek	Jones Beach	"	8/19/33	1	"		"
*Transmarine #123	"	Brooklyn, N. Y.	Jones Beach	Transmarine Transportation Co.	8/21/33	1	"		"
*Transmarine #123	"	Brooklyn, N. Y.	Jones Beach	"	8/26/33	1	"		"
*Transmarine #122	"	Brooklyn, N. Y.	Jones Beach	"	8/26/33	1	"		"
*W. J. Frank	"	Jones Beach	Brooklyn, N. Y.	"	9/12/33	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach	Bouker Contracting Co., N.Y.C.	9/13/33	1	"		"
*F. K. Snare #180	"	New York, N. Y.	Jones Beach	"	9/13/33	1	"		"
* Catamarans	"	New York, N. Y.	Jones Beach	"	9/13/33	1	"		"
*W. Frank	"	Brooklyn, N. Y.	Jones Beach	Transmarine Transportation Co.	9/ 6/33	1	"		"
#McAllister Bros.	"	New York, N. Y.	Jones Beach	Bouker Contracting Co., N.Y.C.	9/20/33	1	"		"
*Seaboard #70	"	New York, N. Y.	Jones Inlet	"	10/18/33	1	"		"
*Martha	"	Stapleton	Jones Beach	"	10/18/33	1	"		"
#McAllister Bros.	"	Stapleton, N. Y.	Jones Beach	"	10/27/33	1	"		"
#McAllister Bros.	"	New York, N. Y.	Jones Beach	"	11/16/33	1	"		"
#McAllister Bros.	"	New York, N. Y.	Jones Beach	"	11/18/33	1	"		"
Unknown		Havestraw, N. Y.	New York, N. Y.	O'Donnell Transportation Co.	11/29/33	1	"		"
Unknown		Beacon, N. Y.	New York, N. Y.	"	11/29/33	1	"		"
*Argo		E. Chester, N. Y.	Stamford, Conn.	Simpson, Spence & Young	12/14/33	1	"		"
*Argo		Stamford, Conn.	New York, N. Y.	"	12/15/33	1	"		"
*Husted	Fill	Hoboken, N. J.	Jones Beach	Bouker Contracting Co., N.Y.C.	12/18/33	1	"		"
*Seaboard #39	"	Stapleton	Jones Beach	"	12/18/33	1	"		"
*Seaboard #55	Fuel	Bayonne, N. J.	Fall River, Mass.	Seaboard Shipping Corp.	12/17/33	1	"		"
*Seaboard #55	"	New London, Conn.	Fall River, Mass.	"	12/28/33	1	"		"
*Seaboard #55	"	New London, Conn.	Fall River, Mass.	"	12/29/33	1	"		"
*Seaboard #55	"	Bristol	Newport, R. I.	"	12/30/33	1	"		"

#. Vessels owned by applicant.
* Vessels under charter to applicant.

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Towing

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1934 to December 31, 1934					
*Seaboard #55	Fuel	Newport, R. I.	New Haven, Conn.	Seaboard Shipping Corp.	1/5 /34	1	Oral		Trip
*Seaboard #55	"	New Haven, Conn.	Bayonne, N. J.	"	1/ 6/34	1	"		"
Unknown	Fill	New York, N. Y.	East Rockway, N. Y.	Bouker Contracting Co., N.Y.C.	1/ 9/34	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach	"	1/17/34	1	"		1/15–1/17
Unknown	"	New York, N. Y.	Jones Beach	"	1/20/34	1	"		1/20–1/21
Unknown	"	New York, N. Y.	Jones Beach	"	2/22/34	1	"		2/22–2/24
*Oil Barge City Service	Fuel	New York, N. Y.	Renssler, N. Y.	Crew Levick Company, N.Y.C.	4/22/34	1	"		Trip
*Oil Barge City Service	"	Kingston, N. Y.	Perth Amboy, N. J.	"	4/22/34	1	"		"
*Cherokee		Kingston, N. Y.	Edgewater, N. J.	Sullivan Dry Dock, Brooklyn, N. Y.	4/22/34	1	"		"
*City Service #8	"	Perth Amboy, N. J.	Kingston, N. Y.	Crew Levick Company, N.Y.C.	4/27/34	1	"		"
*City Service #8	"	Perth Amboy, N. J.	Kingston, N. Y.	"	4/30/34	1	"		"
*Oshee	Oil	Gulfport, N. Y.	Troy, N. Y.	Murray Transp. Co., N.Y.C.	5/ 1/34	1	"		"
*Oshee	Oil	Enroute	Troy, N. Y.	"	5/ 2/34	1	"		"
*Bouker #58 H	Fill	Staten Island	East Rockway	Bouker Contracting Co., N.Y.C.	5/ 9/34	1	"		"
*Bouker #71 H	"	Staten Island	East Rockway	"	5/ 9/34	1	"		"
*Bouker #56 H–#70 H	"	East Rockway	Staten Island	"	5/ 9/34	1	"		"
*Barge #22	Copper Cable	Bayonne, N. J.	Jones Beach, N. Y.	Amer. Smelting Co., N.Y.C.	5/18/24	1	"		5/11–5/17
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	Bouker Contracting Co., N.Y.C.	5/20/34	1	"	20	5/15–5/20
Unknown	"	New York, N. Y.	Jones Beach, N. Y.	"	5/21/34	1	"		5/21–5/22
*Dredge Empire State		Clairemont	Jones Inlet	W. H. Galagan, Inc., N.Y.C.	5/25/34	1	"		Trip
*Southern Cross	Fill	Staten Island	East Rockway	Bouker Contracting Co., N.Y.C.	6/12/34	1	"		"
*Bouker #50	"	Staten Island	East Rockway	"	6/12/34	1	"		"
*Bouker #59	"	Staten Island	East Rockway	"	6/12/34	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach	"	8/ 7/34	1	"		8/5–8/7
*Boukder ?	"	New York, N. Y.	Jones Beach	"	8/18/34	1	"		8/18–8/21
*Oshee	Oil	Staten Island	West Point, N. Y.	Murray Transp. Co., N.Y.C.	8/28/34	1	"		Tirp
*Bouker	Constr. Fill	New York, N. Y.	Jones Beach	Bouker Contracting Co., N.Y.C.	9/19/34	1	"		9/19–9/21
*Bouker	Fill	New York, N. Y.	Jones Beach	"	9/19/34	1	"		Trip
*Bouker	"	New York, N. Y.	Jones Beach	"	9/19/34	1	"		"
*Bouker	Constr. Fill	New York, N. Y.	Jones Beach	"	9/29/34	1	"		9/19–9/21
*Bouker	"	New York, N. Y.	Jones Beach	"	10/13/34	1	"		10/7/34
				January 1, 1935 to December 31, 1935					
*Westmoreland		Bridgeport, Conn.	Edgewater, N. J.	P. F. Martin Inc., Phila., Pa.	5/29/35	1	Oral		Trip
#Victory		Tremley Point N. Y.	Havestraw, N. Y.		12/12/35	1	"		"
#Victory		New York, N. Y.	Havestraw, N. Y.		12/13/35	1	"		"
#Victory		Havestraw, N. Y.	Union Dry Dock		12/13/35	1	"		"
				January 1, 1936 to December 31, 1936					
*Nana Scully *A. N. Abee *Blue Seal	Coal	Bridgeport, Conn.	Norwalk, Conn.	Blue Line Inc., N.Y.C.	3/29/36	1	Oral	1,000	2/7–2/10 3/21/4–13

Vessels owned by applicant.
* Vessels under charter to applicant.

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Towing

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1937 to December 31, 1937					
*Dumper Jrs. #3	Fill	*Brooklyn, N. Y.	Sea & Return	Bouker Contracting Co., N.Y.C	3/ 7/37	1	Oral		Trip
*Dumper #81	"	Brooklyn, N. Y.	Sea & Return	"	3/ 7/37	1	"		"
*Bouker #98	"	Brooklyn, N. Y.	Sea & Return	"		1	"		"
$Victory	Guns & Parts	Fishers Island	New London, Conn.	U. S. Army, N.Y.C.	5/ 9/37	1	"		"
$Victory	"	New London, Conn.	Fishers Island	"	5/10/37	1	"		"
$Victory	"	New London, Conn.	Enroute	"	5/11/37		"		"
$Victory	"	Fishers Island	New London, Conn.	"	5/11/37	1	"		7/8–7/12
$Victory	Guns	New London, Conn.	Ft. Wright, N. Y.	War Dept., Office of Quartermaster	5/11/37	1	Written or bid		5/10–5/11
$Victory	Machinery	Albany, N. Y.	Kingston, N. Y.	Callahan Road Improve. Co., So. Bethlehem N. Y.	7/20/37	1	Oral		Trip
$Victory	"	Kingston, N. Y.	Rondout Creek, N. Y.	"	7/21/37	1	"		"
*Tanker Greene	Fuel	Bay Way	Havestraw, N. Y.	McAllister Tankers Corp., N.Y.C.	12/ 1/37	1	"		"
*Tanker Greene	"	Havestraw, N. Y.	Tide Water Bay	"	12/ 2/37	1	"		"
*Tanker Greene	"	Tide Water Bay	Stamford, Conn.	"	12/ 3/37	1	"		"
				January 1, 1938 to December 31, 1938					
$Monarch		Hempstead Harbor	Brooklyn, N. Y.	Merrit-Chapman & Scott, N.Y.C.	8/12/38	1	Oral		Trip
*Monarch		Hoboken, N. J.	Hempstead Harbor	"	8/ 6/38	1	"		"
*Bouker #54		Hempstead Harbor	Pt. Morris	"	8/ 8/38	1	"		"
*Monarch		Hempstead Harbor	Pt. Morris	"	8/ 8/38	1	"		"
				January 1, 1940 to December 31, 1940					
*Point Light	Bldg. Material	So. Amboy, N. J.	So. River	Eastern Terra Cotta, N.Y.C.	9/ 6/40	1	Oral		Trip
$8 Barges	Munitions	West Point	Brooklyn, N. Y.	Transmarine Transp. Co., N.Y.C.	9/30/40	1	"		"
				January 1, 1941 to December 31, 1941					
*Carib Star	Miscellaneous	Scotland Light Ship	Quarantine	Merrit-Chapman Scott, N.Y.C.	5/ 5/41	1	Oral		Trip
*Oil Barge Val #2	Oil	Havestraw, N. Y.	Elizabeth Port	McAllister Tankers Corp., N.Y.C.	8/15/41	1	"		"
*Oil Barge Val #2	"	Elizabeth Port	Havestraw, N. Y.	"	8/15/41	1	"		"
				January 1, 1942 to December 31, 1942					
*Derrick		Staten Island	Cape Cod, Mass.	Merrit-Chapman & Scott, N.Y.C.	4/24/42	1	Oral		4/21–4/25
*Chapman Bros.	Services	Clifton, N. J.	Valant Rock, Conn.	"	4/26/42	1	"		Trip
*Chapman Bros.	"	Enroute New London, Conn.		"	4/27/42	1	"		"
$James McAllister	"	Standing by and towing, New London, Conn.		"	4/28/42	1	"		"
*Derrick Chapman	"	Tending derrick and towing at New London, Conn.		"	4/29/42	1	"		"
$James McAllister	"	Standing by and towing at New London, Conn.		"	4/30/42	1	"		"
$James McAllister	"	Standing by and towing at New London, Conn.		"	5/ 2/42	1	"		"
$James McAllister	"	Standing by and towing at New London, Conn.		"	5/ 3/42	1	"		"
$James McAllister	"	At New London, Conn.		"	5/ 4/42	1	"		"
$James McAllister	"	New London, Conn.	New York, N. Y.	"	5/12/42	1	"		"
$McAllister #58	Ammunition	Gravesend Bay, N. Y.	Iona Island	Healing, N. J.	3/10/42	1	Written		"

$ Vessels owned by applicant.
* Vessels under charter to applicant.

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Interstate Commerce Commission
Washington

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Freightage Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 4, 1931 to December 31, 1931					
*J. W. Johnson		Phila., Pa.	New York, N. Y.						6/8-6/22
*Derrick #91	Boilers	New Rochelle, N. Y.	David's Island	Callahan Eng. Co., South Bethlehem, N. Y.	7/ 9/31	1	Oral	10	Trip
*J. W. Johnson	Petroleum	Phila., Pa.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	7/11/31	1	"	156	"
*J. W. Johnson	Petroleum	Paulsboro, N. J.	Brooklyn, N. Y.		7/31/31	1	"	61	"
Unknown	(1 Kiln Dryer	Greenville, N. J.	Roslyn, N. Y.	Andrews Road & Supply Co.	8/ 5/31	1	"		"
	(1 Frame								
*J. A. Murray	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	8/ 7/31	1	"	61	"
*J. W. Johnson									
*J. A. Murray	Sugar Bags	Phila., Pa.	Long Is. City	Amer. Sugar Co., Baltimore, Md.	8/12/31	1	"	122	"
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	8/12/31	1	"	31	"
*J. W. Johnson	"	"	"	"	8/12/31	1	"	30	"
*J. W. Johnson	"	Phila., Pa.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	8/19/31	1	"	64	"
*J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	8/21/31	1	"	39	"
*J. W. Johnson	Sugar Bags	Phila., Pa.	New York, N. Y.	Amer. Sugar Co., Baltimore, Md.	8/24/31	1	"	70	"
*J. A. Murray	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	8/28/31	1	"	134	"
*J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	8/31/31	1	"	63	"
*J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/ 2/31	1	"	69	"
*J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	9/ 9/31	1	"	53	"
*J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	9/16/31	1	"	42	"
*J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	9/17/31	1	"	24	"
*Barge 98	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	9/19/31	1	"	90	"
*Albany									
*Albany	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	9/25/31	1	"	122	"
*Loveland #4	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	9/25/31	1	"	155	"
*Loveland #4	"	Bayonne, N. J.	Paulsboro, N. J.	Vacuum Oil Co., New York, N. Y.	9/26/31	1	"	52	"
*J. W. Johnson									
*Albany	"	Pt. Breeze	New York, N. Y.	Standard Oil Co., New York, N. Y.	9/26/31	1	"	4	"
*J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/29/31	1	"	34	"
*J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	10/ 5/31	1	"	2	"
*J. W. Johnson	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/ 6/31	1	"	36	"
*J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	10/ 7/31	1	"	57	"
*Albany	"	New York, N. Y.	Delair, N. J.	"	10/ 7/31	1	"	68	"
*Albany	Hessian Cloth	New York, N. Y.	Phila., Pa.	Chase Bag Co., New York, N. Y.	10/ 8/31	1	"	24	"
*McAllister 98									
*J. A. Murray	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	10/ 9/31	1	"	39	"
*J. W. Johnson									
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	10/ 9/31	1	"	92	"
*J. W. Johnson	"	Constable Hook, N. J.	Paulsboro, N. J.	"	10/14/31	1	"	59	"
*Albany	Rags (Bales)	Phila., Pa.	New York, N. Y.	Amer. Sugar Refining Co., Baltimore, Md.	10/15/31	1	"	56	"
*McAllister 98	Paper	New York, N. Y.	Delair, N. J.	Kieckhoffer Container Co., Delair, N. J.	10/20/31	1	"	65	"
*Albany									
*Albany	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/20/31	1	"	17	"
*Albany	"	Paulsboro, N. J.	Jersey City, N. J.	Vacuum Oil Co., New York, N. Y.	10/20/31	1	"	42	"
*[illegible]	[illegible]	Paulsboro, N. J.	Hoboken, N. J.	[illegible]	10/21/31	1	"	112	"
*Albany	1 Bucket	Pier 6, Hoboken, N. J.	Phila., Pa.	M. P. Howlett, New York, N. Y.	10/21/31	1	"		"
*Albany	Petroleum	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/27/31	1	"	84	"

#J. W. Johnson)									
*J. A. Murray	Sugar Bags	Phila., Pa.	Long Is. City	Amer. Sugar Co., Baltimore, Md.	8/12/31	1	"	122	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	8/12/31	1	"	31	"
#J. W. Johnson	"	"	"	"	8/12/31	1	"	30	"
#J. W. Johnson	"	Phila., Pa.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	8/19/31	1	"	64	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	8/21/31	1	"	39	"
#J. W. Johnson	Sugar Bags	Phila., Pa.	New York, N. Y.	Amer. Sugar Co., Baltimore, Md.	8/24/31	1	"	70	"
*J. A. Murray	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	8/28/31	1	"	134	"
#J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	8/31/31	1	"	63	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/ 2/31	1	"	69	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/ 9/31	1	"	53	"
#J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	9/16/31	1	"	42	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	9/17/31	1	"	24	"
#Barge 98)	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/19/31	1	"	90	"
#Albany)									
#Albany	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	9/25/31	1	"	122	"
*Loveland #4	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	9/25/31	1	"	155	"
*Loveland #4)	"	Bayonne, N. J.	Paulsboro, N. J.	Vacuum Oil Co., New York, N. Y.	9/26/31	1	"	52	"
#J. W. Johnson)									
#Albany	"	Pt. Breeze	New York, N. Y.	Standard Oil Co., New York, N. Y.	9/26/31	1	"	4	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/29/31	1	"	34	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	10/ 5/31	1	"	2	"
#J. W. Johnson	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/ 6/31	1	"	36	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 7/31	1	"	57	"
#Albany	"	New York, N. Y.	Delair, N. J.	"	10/ 7/31	1	"	68	"
#Albany	Hessian Cloth	New York, N. Y.	Phila., Pa.	Chase Bag Co., New York, N. Y.	10/ 8/31	1	"	24	"
#McAllister 98)									
*J. A. Murray)	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 9/31	1	"	39	"
#J. W. Johnson)									
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	10/ 9/31	1	"	92	"
#J. W. Johnson	"	Constable Hook, N. J.	Paulsboro, N. J.	"	10/14/31	1	"	59	"
#Albany	Rags-(Bales)	Phila., Pa.	New York, N. Y.	Amer. Sugar Refining Co., Baltimore, Md.	10/15/31	1	"	56	"
#McAllister 98)	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/20/31	1	"	65	"
#Albany)									
#Albany	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/20/31	1	"	17	"
#Albany	"	Paulsboro, N. J.	Jersey City, N. J.	Vacuum Oil Co., New York, N. Y.	10/20/31	1	"	42	"
#J. W. Johnson	"	Paulsboro, N. J.	Hoboken, N. J.	"	10/21/31	1	"	112	"
#Albany	1 Bucket	Pier 6, Hoboken, N. J.	Phila., Pa.	M. P. Howlett, New York, N. Y.	10/21/31	1	"		"
#Albany	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/27/31	1	"	81	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/28/31	1	"	52	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	11/ 2/31	1	"	62	"
*D. L. & W. #20	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/ 4/31	1	"	83	"
*D. L. & W. #20	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	11/ 5/31	1	"	155	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/10/31	1	"	41	"
#Albany	Bales of Rags	Phila., Pa.	New York, N. Y.	Amer. Sugar Co., Baltimore, Md.	11/11/31	1	"	130	"
#Albany	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/17/31	1	"	44	"
*G. B. #20	Lumber	Phila., Pa.	Hoboken, N. J.		11/18/31	1	"		"
#Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	11/19/31	1	"	35	"
#J. W. Johnson	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	11/19/31	1	"	70	"
#Albany	"	Pt. Breeze	New York, N. Y.	Kieckheffer Container Co., Delair, N. J.	11/24/31	1	"	50	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	"	11/24/31	1	"	30	"
#J. W. Johnson)	Petroleum Products	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	11/25/31	1	"	77	"
*Loveland #4)									
#Albany	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/28/31	1	"	45	"
#J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	11/30/31	1	"	45	"
#Albany	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	12/ 2/31	1	"	47	"
#J. W. Johnson	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	12/ 2/31	1	"	57	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Pier 33, Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	12/ 8/31	1	"	59	"
#Albany	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	12/17/31	1	"	171	"

Vessels owned by applicant.

* Vessels under charter to applicant.

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EXHIBIT II

Page 2

Freightage Operations

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1932 to December 31, 1932					
*Albany	Fuel	Constable Hook	Staten Island	)					
*Albany	"	Staten Island	New Brunswick	)					
*Albany	"	New Brunswick	Bound Rock, N. J.	)					
*Albany	"	Bound Rock, N. J.	Princeton, N. J.	)					
*Albany	"	Princeton, N. J.	Trenton, N. J.	)	4/ 9/32			4300 gals.	4/9–4/16
*Albany	"	Trenton, N. J.	So. Philadelphia	)					
*Albany	"	So. Philadelphia	Bordentown	)					
*Albany	"	Bordentown	Trenton, N. J.	)					
*Albany	"	Trenton, N. J.	Jersey City, N. J.	)					
*Albany	Ass't. Freight	So. Phila.	Jersey City, N. J.	Moore & McCormack, N.Y.C.	4/16/32	1	Oral	102	Trip
*J. W. Johnson	Petroleum Products	Pt. Breeze	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	4/25/32	1	"	45	"
*J. W. Johnson)	"	Pt. Breeze	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	4/25/32	1	"	68	"
*Albany)								178	
*J. W. Johnson	"	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	5/ 2/32	1	"	48	"
*J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/ 9/32	1	"	18	"
*Albany	"	Paulsboro, N. J.	New York, N. Y.	"	5/16/32	1	"	40	"
*Albany	?	Phila., Pa.	Brooklyn, N. Y.	"	5/17/32	1	"	42	"
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/18/32	1	"	89	"
*J. W. Johnson	Prassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	5/21/32	1	"	18	"
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., N.Y.C.	5/27/32	1	"	93	"
*Loveland *4)	?	Phila., Pa.	Brooklyn, N. Y.		5/ 3/32	1	"	304	
*Albany)									
*Victory (Derrick)	Constr. Fill			U. S. Engineers Office, N.Y.C.	5/31/32	1	Written or bid		
*G. B. *20			Brooklyn, N. Y.		6/ 1/32	1	Oral	285	"
*Albany			Brooklyn, N. Y.		6/21/32	1	"	207	"
*J. W. Johnson	Ass't. Freight	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	6/ 6/32	1	"	25	"
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	6/ 7/32	1	"	54	"
*Albany			Brooklyn, N. Y.		6/ 8/32	1	"	68	"
*Albany	Palm Oil	Brooklyn, N. Y.	Phila., Pa.	Daniel Bacon, N.Y.C.	6/13/32	1	"	20	"
*Albany	Prassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	6/13/32	1	"	18	"
*J. W. Johnson	Petroleum Products	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., N.Y.C.	6/ 6/32	1	"	35	"
*Albany	Paraffin Wax	Pt. Breeze	New York, N. Y.	Chatham Petroleum Co., N.Y.C.	6/30/32	1	"	11	"
*Albany			New York, N. Y.		7/ 1/32	1	"	134	"
*Albany	Ass't. Freight	Brooklyn, N. Y.	Baltimore, Md.	Barber Steamship Line, N.Y.C.	7/ 7/32	1	"	97	"
*Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	7/28/32	1	"	16	"
*Albany			Brooklyn, N. Y.		7/28/32	1	"	39	"
*Albany	"	Weehawken	Phila., Pa.	A. V. Berner & Co.	8/ 1/32	1	"	6	"
*Albany	Germ. Copal	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/ 1/32	1	"	18	"
*Albany	Ass't. Freight	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/ 1/32	1	"	27	"
*Albany			Brooklyn, N. Y.		8/ 8/32	1	"	21	"
*Albany	Paraffin Wax	Pt. Breeze	Brooklyn, N. Y.	Chatham Petroleum Co., N.Y.C.	8/ 8/32	1	"	28	"
*Albany	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	8/ 8/32	1	"	146	"
*Albany	Goat Skin & Sheep Skin	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/11/32	1	"	28	"

#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/ 9/32	1	"	18	"
#Albany	"	Paulsboro, N. J.	New York, N. Y.	"	5/16/32	1	"	40	"
#Albany	?	Phila., Pa.	Brooklyn, N. Y.	"	5/17/32	1	"	42	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/18/32	1	"	89	"
#J. W. Johnson	Prassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	5/21/32	1	"	18	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., N.Y.C.	5/27/32	1	"	93	"
*Loveland #4) #Albany)	?	Phila., Pa.	Brooklyn, N. Y.		5/ 3/32	1	"	304	"
#Victory (Derrick)	Constr. Fill			U. S. Engineers Office, N.Y.C.	5/31/32	1	Written or bid		
*G. B. #20			Brooklyn, N. Y.		6/ 1/32	1	Oral	285	"
#Albany			Brooklyn, N. Y.		6/21/32	1	"	207	"
#J. W. Johnson	Ass't. Freight	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	6/ 6/32	1	"	25	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	6/ 7/32	1	"	54	"
#Albany			Brooklyn, N. Y.		6/ 8/32	1	"	68	"
#Albany	Palm Oil	Brooklyn, N. Y.	Phila., Pa.	Daniel Bacon, N.Y.C.	6/13/32	1	"	20	"
#Albany	Piassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	6/13/32	1	"	18	"
#J. W. Johnson	Petroleum Products	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., N.Y.C.	6/ 6/32	1	"	35	"
#Albany	Paraffin Wax	Pt. Breeze	New York, N. Y.	Chatham Petroleum Co., N.Y.C.	6/30/32	1	"	11	"
#Albany			New York, N. Y.		7/ 1/32	1	"	134	"
#Albany	Ass't. Freight	Brooklyn, N. Y.	Baltimore, Md.	Barber Steamship Line, N.Y.C.	7/ 7/32	1	"	97	"
#Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	7/28/32	1	"	16	"
#Albany			Brooklyn, N. Y.		7/28/32	1	"	39	"
#Albany	"	Weehawken	Phila., Pa.	A. V. Berner & Co.	8/ 1/32	1	"	6	"
#Albany	Germ. Copal	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/ 1/32	1	"	18	"
#Albany	Ass't. Freight	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/ 1/32	1	"	27	"
#Albany			Brooklyn, N. Y.		8/ 8/32	1	"	21	"
#Albany	Paraffin Wax	Pt. Breeze	Brooklyn, N. Y.	Chatham Petroleum Co., N.Y.C.	8/ 8/32	1	"	28	"
#Albany	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	8/ 8/32	1	"	146	"
#Albany	Goat Skin & Sheep Skin	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/11/32	1	"	28	"
#Albany		New York, N. Y.	Pt. Breeze		8/11/32	1	"	51	"
#Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	8/18/38	1	"	59	"
#Albany		Pt. Breeze	Brooklyn, N. Y.		8/18/32	1	"	51	"
#Albany	Goat Skin	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/22/32	1	"	3	"
#Albany	Ass't. Freight	New York, N. Y.	Phila., Pa.	Kokersia Line, N.Y.C.	8/22/32	1	"	22	"
#Albany	Rapeseed Oil	Brooklyn, N. Y.	Phila., Pa.	Wm. J. Roundtree Co., N.Y.C.	8/22/32	1	"	28	"
#Albany					8/23/32	1	"	116	"
#Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	8/28/32	1	"	34	"
#Albany	Palm Oil	Brooklyn, N. Y.	Phila., Pa.	Daniel Bacon, N.Y.C.	8/31/32	1	"	19	"
#Albany	Ass't. Freight	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/31/32	1	"	11	"
#Albany			Brooklyn, N. Y.		9/ 7/32	1	"	46	"
#Albany	Petroleum Products	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	9/ 7/32	1	"	41	"
#Albany	Paraffin Wax	Pt. Breeze	Brooklyn, N. Y.	Chatham Petroleum Co., N.Y.C.	9/ 7/32	1	"	28	"
#Albany	Ass't. Freight	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	9/10/32	1	"	77	"
Unknown	Pyretheum Flowers	New York, N. Y.	Baltimore, Md.	"	?	1	"	48	"
#Albany			Brooklyn, N. Y.	"	9/15/32	1	"	110	"
#Albany	Ass't. Freight, Pepper	New York, N. Y.	Phila., Pa.	"	9/20/32	1	"	124	"
			Baltimore, Md.		10/ 8/32	1	"	27	"
#Albany	Goat Skins & Pepper	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	10/ 8/32	1	"	84	"
#Albany	Petroleum Products	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	10/15/32	1	"	120	"
#Albany	Porcelain	Brooklyn, N. Y.	Phila., Pa.	Wm. J. Roundtree Co., N.Y.C.	10/22/32	1	"	13	"
#Albany	Ass't. Freight	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	10/ 8/32	1	"	80	"
#Albany			Brooklyn, N. Y.		11/ 2/32	1	"	245	"
#Albany	"	Staten Island	Phila., Pa.	Boyd Weir & Sewell, N.Y.C.	11/ 7/32	1	"	79	"
#Albany	"	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	11/ 7/32	1	"	8	"
#Albany	Porcelain	Brooklyn, N. Y.	Baltimore, Md.	"	11/14/32	1	"	5	"
#Albany	Ass't. Freight	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	11/14/32	1	"	41	"
#Albany			Brooklyn, N. Y.		11/28/32	1	"	183	"

Vessels owned by applicant.

* Vessels under charter to applicant.

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EXHIBIT II

Page 3

Freightage Operations

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1937 to December 31, 1937					
#Victory	Machinery	New York, N. Y.	Enroute Albany	Callahan Road Improve. Co., So. Bethlehem, N. Y.	7/17/37	1	Oral	250	7/17-7/25
#Victory	"	Albany, N. Y.	Kingstown, N. Y.	"	7/20/37	1	"	250	"
#Victory	"	Kingston, N. Y.	Rondout Creek, N. Y.	"	7/21/37	1	"	250	"
#Victory	Airplanes	No. Beach, N. Y.	Pt. Washington, N. Y.	Columbia (Counsul General), N.Y.C.	10/ 5/37	1	"		Trip
				January 1, 1940 to December 31, 1940					
*J. B. Egbert	M Kanna								3/5-3/14
*William #51	Copper								3/6-3/13
*Cleary #74	Katanga-Cu	S.S. Brynje, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	3/18/40	1	Oral	2672	3/6-3/15
*Creek	Matte								3/8-3/18
*Zeeler #14	Cu ore samples								3/11-3/16
#79	Blister Copper	S.S. Atlantic, N. Y.	Carteret, N. J.	"	4/10/40			515	4/1-4/6
#72								499	4/1-4/10
*Pilot Light								648	Trip
*L. E. Petrie								770	"
*Bright Light								739	"
*Margorie R	Copper Matte	S.S. Silver, Brooklyn, N. Y.	Carteret, N. J.	Wm. Roundtree, Co., Inc.	4/30/40			720	"
*Cleary #70								800	"
*Cleary #54								615	"
*Sophia R								656	"
*E. R. Petrie								572	"
#72								504	"
*Catherine W	Copper Matte	S.S. West Isleta, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	4/30/40			511	"
*Roslyn								662	"
#71									6/10-6/2[illegible]
*Zeller #16	Copper Matte	S.S. West Cawthorne	Carteret, N. J.	"	6/21/40			1597	6/10-6/20
*Tunnel Light									6/10-6/20
*Murray River									Trip
*Wm. R									"
*Elizabeth R	Copper Matte	S.S. Pacific, N. Y.	Carteret, N. J.	"	8/31/40			2921	"
*The Beauty									"
*Port Light									"
*Port Light									"
*Sophia R	Blister Copper	New York, N. Y.	Carteret, N. J.	"	9/16/40	1	"	564	9/5-9/16
*Elsie R	Copper Matte	S.S. Sagadohoc, N. Y.	Carteret, N. J.	"	9/25/40	1	"	1214	Trip
*Timothy R	Blister Copper								
#79	Blister Copper	S.S. Sagadohoc, N. Y.	Carteret, N. J.	"	9/26/40	1	"	136	9/23-9/26
*McSreney Boys								688	Trip
*Murray Lake								611	"
*William R	Copper &							413	"
#War Chief	Copper Matte	S.S. Grovem, Brooklyn, N. Y.	Carteret, N. J.	"	10/31/40	1		265	"
#Warrior								257	"
#Warrior								37	"
*Murray Bay	Copper Matte & Copper	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	12/21/40		"	2347	"
Murray Gulf									
*Nell Petrie									
*George R									
*Murray Glen									
*Murray C	Copper Matte	S.S. Executive, Brooklyn, N. Y.	Carteret, N. J.	"	12/21/40		"	1657	"
*Murray Hill									

Above Are Some Examples of Heavy Tonnage Freighted for Account of Steamship Lines in International Trade

Vessels owned by applicant.

* Vessels under charter to applicant.

EXHIBIT II

Page 4

Freightage Operations

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	Port From	Port To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1941 to December 31, 1941					
*S. V. Petrie *Murray Bay *L. E. Petrie *J. V. Petrie	Copper Matte	S.S. Pacific, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	1/10/41	1	Oral	2236	Trip
*Murray Hill *E. R. Petrie *Buster	Copper Matte	S.S. City of N. Y.	Carteret, N. J.	"	1/22/41	1	"	1674	"
*Murray Ocean *Murray Sea *Murray Cove *Murray Stream *Jerry R	Copper Matte	S.S. Minnesotan, N. Y.	Carteret, N. J.	"	2/ 4/41	1	"	3084	"
*E. J. Morrison *G. J. McIndoe *P. Smith *Cleary #64	Copper Matte	S.S. Coloradan, Brooklyn, N. Y.	Carteret, N. J.	"	3/26/41	1	"	2527	"
*Catherine W *Moran #107 *#104 H	"	S.S. Chas. H. Cramp	Carteret, N. J.	"	4/19/41	1	"	2077	4/11–4/19 4/11–4/16 4/11–4/17
*Point Light *Buster *Nell Petrie	"	S.S. City of N. Y., Brooklyn, N. Y.	Carteret, N. J.	"	5/13/41	1	"	404 760 766	Trip " "
#Barge #82	Explosives	Metuchin, N. J.	25 miles at sea	War Department	8/ 8/41	1	Written	200	"
*Nan Jewett *Nell Petrie *Annie Horan	Copper Matte	S.S. Minnesotan, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	9/12/41	1	Oral	1866	"
*S. V. Petrie	Lead	S.S. Santa Cruz, N.Y.	Brooklyn, N. Y.	Amer. Metals Co., N.Y.C.	9/12/41	1	"	299	9/8–9/12
*Nan Jewett *Nell Petrie *Annie Horan	Copper Matte	S.S. Minnesotan	Carteret, N. J.	"	9/12/41	1	"	833 607	
*Waldie Jr. *Roslyn	Copper Matte	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	9/13/41		"	426 573	
*Catherine Hicky #77	Lead	S.S. Ozark, Brooklyn, N. Y.	Carteret, N. J.	"	9/15/41		"	530 500 325	9/9–9/15
*Bermuda *Thomas R	Lead	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/15/41		"	250	9/16–9/15
*Della #14	Lead	S.S. Santa Anna	Perth Amboy, N. J.	"	9/18/41		"	504	9/6–9/15
*J. C. Cleary *S. V. Petrie *Fred Petrie *Buster	"	S.S. Santa Cruz	Brooklyn, N. Y.	"	9/18/41		"	495	Trip
*G. Cleary *H. Finn *Tunnel Light	Copper Matte	S.S. West Irmo, Brooklyn, N. Y.	Carteret, N. J.	"	9/21/41		"	1129 986 748	9/16–9/18 9/6–9/12 Trip
*G. Cleary *H. Finn	"	S.S. Oklahoma, N. Y.	Carteret, N. J.	"	9/26/41		"	235	
		S.S. Oklahoma, Pier 37	Carteret, N. J.		9/26/41		"	728 488	"

*Catherine W								
*Moran #107	"	S.S. Chas. H. Cramp	Carteret, N. J.	"	4/19/41	1	"	2077	4/11–4/19
*#104 H									4/11–4/16
*Point Light									4/11–4/17
*Buster	"	S.S. City of N. Y., Brooklyn, N. Y.	Carteret, N. J.	"					
*Nell Petrie									
*Barge #82	Explosives	Metuchin, N. J.	25 miles at sea	War Department	5/13/41	1	"	404	Trip
*Nan Jewett								760	"
*Nell Petrie	Copper Matte	S.S. Minnesotan, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	8/ 8/41	1	Written	766	"
*Annie Horan								200	"
*S. V. Petrie	Lead	S.S. Santa Cruz, N.Y.	Brooklyn, N. Y.	Amer. Metals Co., N.Y.C.	9/12/41	1	Oral	1866	"
*Nan Jewett									
*Nell Petrie	Copper Matte	S.S. Minnesotan	Carteret, N. J.	"	9/12/41	1	"	299	9/8–9/12
*Annie Horan									
*Waldie Jr.	Copper Matte	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	9/12/41	1	"	833	
*Roslyn								607	
*Catherine Hicky								426	
#77	Lead	S.S. Ozark, Brooklyn, N. Y.	Carteret, N. J.	"	9/18/41		"	573	
*Bermuda	Lead							530	
*Thomas R	Lead	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/15/41		"	500	9/9–9/15
*Della #14	"	S.S. Santa Anna	Perth Amboy, N. J.	"				325	
*J. C. Cleary								250	9/16–9/15
*S. V. Petrie	"				9/15/41		"	504	9/6–9/15
*Fred Petrie		S.S. Santa Cruz	Brooklyn, N. Y.		9/18/41		"	495	Trip
*Buster	Copper Matte	S.S. West Irmo, Brooklyn, N. Y.	Carteret, N. J.	"	9/18/41		"		9/16–9/18
*G. Cleary					9/21/41		"	1129	9/6–9/12
*H. Foss	"	S.S. Oklahoma, N. Y.	Carteret, N. J.	"				986	
*Tunnel Light								748	Trip
*G. Cleary	"	S.S. Oklahoma, Pier 37	Carteret, N. J.	"	9/26/41		"	235	
*H. Foss									
*Tunnel Light					9/26/41		"	728	"
*Zeller #14	Copper, Copper Powder & Lead	Carteret, N. J.	New York, N. Y.	"				488	
*Cathode	Lead	S.S. Medina, N. Y.	Brooklyn, N. Y.	"	9/30/41		"	4629	"
*Zeller #14	Salvage, Mexican Lead	S.S. Panuto	Carteret, N. J.	"	9/30/41		"		
*L. E. Petrie	Bars Lead	S.S. Agwistar	Brooklyn, N. Y.	"	10/ 4/41		"	200	"
*Fred Petrie	Bars Lead	S.S. Santa Cruz	Perth Amboy, N. J.	"				203	"
*Zeller #14					10/16/41		"		
*J. V. Petrie	Copper Matte	S.S. Columbian, Brooklyn, N. Y.	Carteret, N. J.	"	10/17/41		"	400	10/8–10/16
*Patricia R								205	10/13–10/17
*J. V. Petrie	Bars Lead	S.S. Santa Cruz, N.Y.	Brooklyn, N. Y.	"	10/11/41		"	2005	Trip
*Patricia R	Misc. Equip.	Carteret, N. J.	S.S. W. Modus, N. Y.	"	10/20/41		"		
*E. R. Petrie	Bars Copper	Carteret, N. J.	Hastings, N. Y.	"	10/20/41		"	450	10/13–10/20
#Warrior	Misc. Equip.	Carteret, N. J.	S.S. Pacific Oke, N. Y.	"	10/20/41		"	340	10/14–10/20
*Nan Foss					11/ 6/41		"	443	10/24–10/29
*Harry G. Lee	Copper Matte	S.S. Wild Wood, Brooklyn, N. Y.	Carteret, N. J.	"				71	11/2–11/6
#McAllister #82					11/10/41		"		
#79	Misc. Equip.	Carteret, N. J.	S.S. Santa Monica, N. Y.	"				1636	Trip
*Moran #58	Bars Cero	S.S. Santa Cruz, N.Y.	Brooklyn, N. Y.	"	11/22/41		"	134	11/14–11/22
*Moran #109	Lead								
*Murray Valley	1981 Bars Cero Lead	S.S. Santa Cruz, N.Y.	Perth Amboy, N. J.	"	11/24/41		"	728	11/16–11/19
*Daniel R,	5,994 Bars Lead	S.S. Santa Anna, N.Y.	Brooklyn, N. Y.	"					11/16–11/24
*Daniel R	Bars of Lead	S.S. Santa Anna, N.Y.	Perth Amboy, N. J.	"	11/25/41		"	100	11/16–11/25
*Zeller #14						1	"	300	12/10–12/12
*Zeller #18	Copper Matte	S.S. Henry Grove,	Carteret, N. J.	"		1	"	100	12/10–12/15
*Zeller #10									
*Peggy Carney					12/11/41	1	"	3306	Trip
*M. B. Peterson	Oroya Copper	S.S. Santa Aria	New York, N. Y.	"					
*Elsie R					12/16/41	1	"	885	"
*Peggy Carney	Burlap Bags, Machinery	Carteret, N. J.	S.S. Seminole, N. Y.	"	12/29/41	1	"	160	12/15–12/29
	Copper, Lead	Carteret, N. J.	N. Y. Harbor	"					
	Lead,		Perth Amboy, N. J.		12/31/41	1	"	3985	12/1–12/31
	Bars Cerro Lead	S.S. Santa Cruz, N.Y.	Brooklyn, N. Y.	"	12/31/41				
					12/31/41		"	630	12/1–12/31

Vessels owned by applicant.
* Vessels under charter to applicant.

Examples of Some 2 Million Tons of Metals Freighted

[fol. 183]

EXHIBIT II

Page 5

Freightage Operations

Interstate Commerce Commission
Washington

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.
McAllister Brothers, Inc.

Name of Boat	Commodity	From	To	Shipper–Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1942 to December 31, 1942					
Unknown	Explosives	Brooklyn, N. Y.	25 miles at sea	Netherlands Purch. Comm.	3/31/42	1	Oral		
*Murray Bay	1036 drums toluol	Pier 12, C.R.R., N. J.	S.S. Algic, Erie Basin	Moore & McCormack, N.Y.C.	4/ 1/42	1		225	
#Barge #63	615 drums toluol	Pier 14, C.R.R., N. J.	S.S. Mary, Brooklyn	"	4/ 1/42	1		134	3/29–4/1
*Will Petrie	1476 drums toluol	Delaware L. & W.	S.S. Antonius	"	5/ 5/42			452	
*J. V. Petrie	603 drums toluol	Erie R.R.	Erie Basin	"					
*Utah	Ammunition	So. Amboy, N. J.	S.S. Cold Harbor	"	5/19/42	1			5/18–5/19
#Barge #77	Small Arms	So. Amboy, N. J.	S.S. Scottsburg	"	5/20/42	1			5/19–5/20
Unknown	394 drums toluol	C.R.R., N. J. Dock	S.S. Esek Hopkins	"	6/ 8/42			87	6/4–6/8
*Cabin Light	392 drums toluol	Erie Dock	S.S. John Walker	"	8/25/42	1		65	
*Andy Horan	950 drums toluol	Pier 12, C.R.R., N. J.	S S. Alma Mata, Jersey City	"	9/ 3/42	1		207	
*Agnes R	Bulk ore	S.S. Besholt, Brooklyn, N. Y.	C.R.R., N. J.	Barber Steamship Line	9/10/42			2346	9/1–9/9
*Port Light									9/1–9/8
*Alice R									9/2–9/8
*Laura R									9/2–9/9
*Port Light									9/9–9/10
*Barge Argo		Elizabeth Port, N. J.	Carteret, N. J.	Simpson Spence & Young	11/ 7/42	1			
*Barge Argo		Carteret, N. J.	Rockyhill, Conn.						
		Rockyhill, Conn.	Elizabeth Port, N. J.						

Vessels owned by applicant.
* Vessels under charter to applicant

H. R. 303. A bill to equalize overtime [illegible]

[fol. 184] EXHIBIT III

Copy from article published in the Marine News, November Issue, on Page 39.

Maintaining Trade Names:

"There are shipping companies who over a period of years have, through painstaking service against stiff competition and through advertising, built up for themselves a valuable reputation and clientele in the transportation of cargoes large or small, in the overseas, offshore, intercoastal, coastal and inland trades.

Today with Government war control of all shipping, regular schedules have been discarded, many routes abandoned, and but little cargo is moving for private account. War conditions make this absolutely essential, and we are all willing to make the necessary sacrifices to this end.

There is no reason, however, why the valuable trade names and reputations of the long-established shipping companies should be thrown to the winds. When peace has been restored there will be much more commerce to handle, for many years to come. War is extremely destructive, and billions will be expended in rebuilding that which the whole world is striving so hard to destroy at the present time.

From far and wide will come this commerce, and the demand for materials, raw products, foods and supplies, is going to be so great shippers are not going to waste time trying to look up old records to find the name of the line or lines they formerly used for waterborne commerce.

Unless that name is still clear in their minds, they will in all probability turn to that service which happens to have a solicitor on the spot at the right moment. Their old friends who pulled in their horns, took down their signs, and forgot the trade during the emergency, will be forgotten. The money that has been spent in the past to build up the reputation and for the establishment of a trade name will have been wasted."

[fols. 185-186] At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 26th day of March, A. D. 1943.

No. W-81

McAllister Lighterage Line, Inc. Contract Carrier Application

No. W-217

McAllister Brothers, Inc. Contract Carrier Application

Order

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition of applicants for reconsideration and hearing, and for postponement of the effective date of the denial and dismissal order entered on July 28, 1942, which by its terms was to take effect and be in force from and after September 7, 1942, which effective date was subsequently postponed to April 1, 1943; and good cause appearing:

It is ordered, That said proceedings be, and they are hereby, reopened for hearing and reconsideration.

It is further ordered, That the effective date of said denial and dismissal order be, and it is hereby, postponed until the further order of the Commission.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fol. 187] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W 81

Application of McALLISTER LIGHTERAGE LINE, INC., for exemption of transportation as a contract carrier from the provisions of Part III of the Interstate Commerce Act under the policy declared in Section 303(e).

Docket No. W 217

Application of McALLISTER BROTHERS, INC., for exemption of transportation as a contract carrier from the provisions of Part III of the Interstate Commerce Act under the policy declared in Section 303(e).

Hotel St. George, Brooklyn, New York,
Thursday, September 9, 1943.

Met, pursuant to notice, at 9:30 o'clock a. m.

Before Morris Konigsberg, Examiner

APPEARANCES:

Gerard M. McAllister, Esq., 17 State Street, New York, New York, for applicant.

Maurice A. Krisel, Esq., 17 State Street, New York, New York, for McAllister Lighterage Lines, Inc., applicant.

A. M. Gould, Esq., 17 Battery Place, New York, New York, for McLain Lines, McLain Marine Corp., McLain-Carolina Lines Inc., interveners.

William M. Smith, Esq., 64 Wall Street, New York, New York, for National Water Carriers Association, Inc., interveners.

[fols. 188-189] A. R. Eldred, Esq., 143 Liberty Street, New York, New York, for Rail Carriers in Official Territory, interveners.

[fol. 190]

Proceedings

Exam. Konigsberg: The Interstate Commerce Commission has set for hearing at this time and place Docket W-81, entitled McAllister Lighterage Line, Incorporated, contract carrier application and Docket W-217, McAllister Brothers, Incorporated, contract carrier application.

In these dockets, on July 28th, 1942, Division 4 found that applicants were not in operation on January 1st, 1940 and continuously since, either as contract or common carriers by water in interstate or foreign commerce in the performance of transportation subject to Part III of the Act. The application was accordingly denied.

Upon petition of applicants the proceedings were reopened for hearing and reconsideration by order dated March 26th, 1943. The report rendered on July 28th, 1942 was based upon the application as well as the field service report.

Who appears for the applicants?

Mr. Krisel: Maurice A. Krisel, of counsel. Gerard M. McAllister, attorney of record. 17 State Street, New York City.

Exam. Konigsberg: Are both of you gentlemen admitted to practice before the Interstate Commerce Commission?

Mr. Krisel: Yes.

Mr. McAllister: Yes.

Exam. Konigsberg: Are there any protestants?

[fol. 191] (No response.)

Exam. Konigsberg: Anyone interested in the proceeding?

Mr. Eldred: I desire to intervene, Mr. Examiner.

A. R. Eldred, 143 Liberty Street, New York City, appearing in behalf of the Rail Carriers in Official Territory, as our interest may appear. I am admitted to practice before the Commission.

Mr. Gould: A. M. Gould, representing McLain Lines, New York, as our interests may appear. I won't oppose it and I won't defend it until they state the rights they want first.

Exam. Konigsberg: Have you been admitted to practice before the Commission?

Mr. Gould: No, but I am an officer of the companies.

Exam. Konigsberg: Any other appearances?

Mr. Smith: William M. Smith, for the National Water Carriers, Incorporated, as our interest may appear.

Exam. Konigsberg: Have you been admitted to practice before the Commission?

Mr. Smith: That is right.

Exam. Konigsberg: Any other appearances?

(No response.)

Mr. Krisel: Mr. Examiner, I should like to have the record show that I am an attorney associated with the Legal Division of the War Shipping Administration, that I am appearing here on my annual leave with the permission of [fol. 192] my chief, the general counsel of that agency.

I assume there are no objections to my appearance here.

At this time I would like to withdraw the application of McAllister Brothers, Incorporated.

Exam. Konigsberg: That is W-217?

Mr. Krisel: I don't remember the number.

Exam. Konigsberg: Yes.

Mr. Krisel: I move, at this time, to amend the application of McAllister Lighterage Line, Incorporated, so that it will be an application for common carrier certificate for commodities generally over the routes between the ports as the evidence may indicate hereinafter, and further amend it so that if such evidence is insufficient as a matter of law to establish grandfather rights under Section 309 (a) of the Act that such evidence be considered as evidence of fitness, willingness and ableness of public convenience and necessity under Section 309 (c) of the Act.

Exam. Konigsberg: Let me see if I fully understand you, Mr. Krisel.

The present application is for——

Mr. Krisel: Contract carrier.

Exam. Konigsberg: You want to amend it for a certificate?

Mr. Krisel: Withdrawing the alternative provision for a common carrier certificate. As it reads now it is for a contract carrier and in the alternative for certificate as a [fol. 193] common carrier. I am withdrawing the contract carrier provision.

Exam. Konigsberg: Leaving in effect——

Mr. Krisel: Leaving only in effect the application as a common carrier of commodities generally and for the rendition of towage services generally.

Mr. Eldred: Well, Mr. Examiner, as a matter of principle I think I have to object to the amendment at this time to the application for certificate of public convenience and necessity based upon evidence which would show operation

subsequent to the grandfather date, unless the applicant can show that as of the grandfather date, or prior thereto, he was in bona fide operation.

In other words, this is a new service application that he is trying to establish here at this time, if the grandfather doesn't sustain the rights which he claims, and there has been no notice given to anybody that such an application was to be heard here today.

I have no objection if he wants to file an application properly and notify the interested parties, but certainly this is no time to come in, at the time of the hearing, and want to file a new service application without proper notice to the other parties of record or other water carriers that might be interested in this proceeding.

Exam. Konigsberg: Well, I am sympathetic with your [fol. 194] motion to this extent, Mr. Eldred, that the Act itself provides that where an application is filed that competitive lines and State authorities must be notified. Is that what you have in mind?

Mr. Eldred: That is correct and particularly up to the present time it has only been considered a grandfather application. Now he attempts to come in here and make this a new service application.

Exam. Konigsberg: What have you to say as to that, Mr. Krisel?

Mr. Krisel: Well, Mr. Examiner, my position is simply this: that this is an application for a grandfather certificate.

Exam. Konigsberg: That is true.

Mr. Krisel: But if that evidence isn't sufficient to establish such grandfather rights but is, nevertheless, sufficient to establish under other laws then it becomes the duty of the Commission to grant the certificate.

The fact that the states have not been served is not a controlling factor in the discretion of the Commission, because competitors and the governors have been served with reference to the application of a grandfather certificate and they should be on notice that not only will all evidence with reference to grandfather rights be submitted but everything else as to carriers fitness, public convenience and ne- [fol. 195] cessity and everything else might be submitted.

Exam. Konigsberg: There is another question here, the territory to be served and that had been served. Is that broad enough?

Mr. Krisel: I think that, under the notice, it was adequate to indicate that these people were going to claim as broad authority as they possibly could get and, certainly, the public was put on notice when they were so served. Otherwise we would have multiplicity of applications.

Mr. Eldred: Well, now, Mr. Examiner, of course the Act specifically provides as to how anybody shall file an application for new service, and I don't know how we are going to have any order in this matter if at any time an applicant comes in and decides to amend his application far beyond that which he has already had filed and which the competing carriers have been led to believe was going to be considered at the hearing.

Exam. Konigsberg: Well, what I was trying to follow, Mr. Eldred, in this proceeding, in the same light as we handled the so-called Seaboard and Great Lakes. There, if you will recall, and I believe you were interested in that proceeding, applicant requested permission to operate as a contract carrier under his grandfather rights, and he said, "In the event I haven't established grandfather rights I want rights for the future."

[fol. 196] Now, wherein does that proceeding differ from this?

Mr. Eldred: Well, at the further hearing, wherein he attempted to prove rights based on public convenience and necessity, the Commission sent out a notice.

Exam. Konigsberg: I don't mean the further proceeding, I mean the original proceeding that I handled.

Mr. Eldred: Well, notice was served at that time. He filed an application at that time for interim rights. That was already filed in the application and the public was notified that such was the case, but here we do not have that condition. There has been no application filed for interim rights or for new service operations.

And when the further hearing was set down it was specifically—everybody was advised.

Exam. Konigsberg: I am not talking about the further hearing. I am talking about the original hearing.

Mr. Eldred: No, but I mean the original hearing. The original application covered all that territory and all those factors, whereas this application does not. This is strictly a grandfather application.

Mr. Krisel: May I say this, Mr. Examiner? In a case I had before Examiner Gray, which was decided in a pro-

posed report, which hasn't been published yet. Applicant F. Jacobus applied for a grandfather permit as a contract carrier to furniture scows, charter vessels, under Section 302(e) of the Act.

[fol. 197] He couldn't establish his grandfather rights and so the Examiner found, but he found, from all the evidence before him, that the public convenience and necessity was served by granting this application.

Exam. Konigsberg: With that I quite agree, and that is the same situation as we had in the Seaboard-Great Lakes. But, as I know, the original application was broad enough to include it.

Mr. Krisel: It wasn't any broader in the Jacobus case than it is here.

Exam. Konigsberg: Well, let us proceed and see how we get along.

Mr. Krisel: I think, Mr. Eldred, let us have the evidence and let us see whether you have any objections to it.

Exam. Konigsberg: Yes, suppose we go along like that?

Mr. Eldred: Well, Mr. Examiner, the point that I am making here is not the question of what rights may be granted, but I am certainly opposed to this sort of method of carrying on these hearings. I mean, I think everybody is entitled to know what the issues are going to be when the notice is sent out and not come here to the hearing and find it is an entirely different kind of attack than what you expected to see here. That is what I am objecting to.

I am not objecting to any rights which this applicant may be granted, but I do object to this procedure; coming [fol. 198] here to a hearing and amending the application, putting in an entirely new application, and no notice of that given to anybody else. That is the only thing I am objecting to.

This carrier can be granted whatever he is asking for. I am not objecting to that at all, but I am objecting to this method of procedure, which is entirely wrong.

Exam. Konigsberg: Well, at this time, Mr. Eldred, I would like to proceed with the hearing.

Mr. Eldred: All right, sir.

Exam. Konigsberg: And if I come to the conclusion, or I am of the opinion later on, that it is much broader than it should be and that any interested parties are taken by surprise or so-called surprise, why, we will adjourn the hearing or not accept the amendment to the application.

Mr. Krisel: Very well. I would like to call Mr. Merick. I am taking this witness out of turn, Mr. Examiner, because he is a very busy man.

FRANK E. MERICK was sworn, and testified as follows:

Mr. Eldred: Mr. Examiner, I think it only fair for counsel for the applicant to make a statement as to the territory which he is asking here so that we may know how to cross-examine the witness.

Mr. Krisel: Well, Mr. Eldred, I will say that we are going to claim ports from Maine to South Carolina, inclusive, [fol. 199] coastwise, and inland waterways tributary thereto.

Exam. Konigsberg: Wait a minute, let me get this. Maine to South Carolina?

Mr. Eldred: Inclusive?

Mr. Krisel: Inclusive.

Exam. Konigsberg: Yes?

Mr. Krisel: Coastwise and inland on all waterways tributary to it.

Mr. Gould: What waterways?

Mr. Krisel: Long Island Sound, Hudson River, Delaware and Chesapeake Canal, Delaware Bay.

Mr. Gould: Intercoastal waterway, too?

Mr. Drisel: Yes.

Mr. Eldred: Does this include the sort of operation self-propelled?

Mr. Krisel: By tug and barge and general towage.

Mr. Gould: In his original file did he ask for rights to intercoastal waterway from Delaware all the way on down?

Exam. Konigsberg: I don't know what the issue is before me now. If your amendment is so much broader than the original application I just don't know what I am going to hear.

Mr. Krisel: Well, I think you have got to determine that any rights here are based on the evidence that is introduced. We don't know if we are going to be able to prove all the rights we claim or not. They ask me and I don't know.

[fol. 200] Exam. Konigsberg: Off the record.

(Discussion off the record.)

Mr. Krisel: In the petition filed for rehearing there was a statement of the claims made by the applicant.

Exam. Konigsberg: What is the date of the petition?

Mr. Krisel: Fifteenth of March, 1943.

"It is respectfully requested the Commission reconsider its decision dismissing "McAllisters" application for a common carrier certificate or in the alternative a private contract carrier permit and/or grant a formal hearing on such application."

Exam. Konigsberg: And what was the date of that, please?

Mr. Krisel: That is March 15th, 1943.

Exam. Konigsberg: I still haven't found that.

Mr. Krisel: Now, it was based on this petition, these affidavits, that the case was set for hearing.

Exam. Konigsberg: March 15th, 1943. I am trying to find that.

Mr. Eldred: Well, in the Commission's report on this thing they stated it was points in New York and New Jersey. That was their report that the application covered.

Exam. Konigsberg: Well, I know. We are not talking about the application now, he is talking about the petition filed to reopen the proceeding.

Mr. Eldred: Yes, but was any petition granted to amend [fol. 201] the application and was a copy of the petition sent to other competing carriers?

Mr. Krisel: I don't know, Mr. Eldred. The petition was filed with the Commission and the Commission saw fit to reopen the entire case based on the affidavits submitted. I think the public was on notice when they were filed.

Mr. Eldred: Not if the public did not get a copy of them.

Mr. Krisel: Well, they got copies originally.

Exam. Konigsberg: I think I have got the territory. All right, now, proceed with the witness.

Direct examination.

By Mr. Krisel:

Q. What is your full name, Mr. Merick?
A. My name is Frank E. Merick.
Q. Where do you live?
A. Westfield, New Jersey.
Q. Who do you work for?

A. I am assistant manager for the American Metal Company, Limited.

Q. What business is the American Metal Company, Limited, engaged in?

A. They have many interests throughout the world; interested in mining and smelting of copper, lead and zinc and their by-products.

Q. Where does it maintain its office that you are employed in?

[fol. 202] A. At 61 Broadway, New York.

Q. Do you know the applicant here, McAllister Lighterage Line, Incorporated?

A. Yes.

Q. Do you know Mr. James McAllister, at the table here?

A. Yes.

Q. How long have you known the McAllister Lighterage Line?

A. We have had a contract with McAllister Lighterage Line since January, 1940.

Q. January, 1940?

A. Yes.

Q. And was that a contract for them to render you a transportation service?

A. It was a contract to render lighterage service.

Q. Lighterage service within the limits of New York Harbor?

A. Up to Hastings, Yonkers, down to Perth Amboy.

Q. Perth Amboy, New Jersey?

A. That is right, and the known lighterage limits.

Q. And what was the nature of this lighterage service? Would you explain in a little more detail?

A. Well, the American Metal Company, Limited has a large copper refinery at Carteret, New Jersey. Much of the raw materials that we get in that refinery are brought in from abroad by steamer and they are lightered there.

Q. They are lightered from shipside to Carteret?

[fol. 203] A. That is right.

Q. And that was done by McAllister Lighterage Line?

A. That is right.

Q. What were these raw materials, Mr. Merick?

A. Well, the raw materials are copper blister, mattes, copper ores and other unrefined copper products which come to us for treatment.

Q. Now, they also lighter refined copper products for you outbound from Carteret, is that correct?

A. Yes.

Q. And to what limits did they transport for you these refined products?

A. The outbound products go to Hastings, Yonkers and points in the New York lighterage district and also down to Perth Amboy.

Q. From Carteret?

A. From Carteret.

Q. And is that service still continuing?

A. The contract is still in effect.

Q. Now, you ship copper products out of Carteret elsewhere than within so-called limits of New York Harbor?

A. Oh, yes. Our copper is shipped to all fabricating plants throughout the official territory and elsewhere, of course.

Q. Particularly, do you ship up Long Island Sound?

A. We ship copper to New England a great deal and to [fol. 204] some extent we have shipped it by water to Bridgeport.

Q. Bridgeport?

A. And we have also shipped our lead, which is produced at Carteret, to Bridgeport and New Haven.

Q. Would you tell us a little more fully what these refined products are?

A. Well, refined copper is shipped in various shapes, such as bars and ingots, whereas the lead is shipped in pig shape.

Q. And are they counted?

A. They are shipped loose and counted.

Q. Counted?

A. Yes.

Q. Now, you have a carrier performing service for you on this movement up Long Island, have you not?

A. We now have a carrier, yes.

Q. Could you tell us whether your company's requirements would require the services of another carrier in that territory?

A. Well, it would be very practicable to have another carrier going up to Long Island Sound, because at the present time we have only one on which we can depend.

Q. You only have one on which you can depend?

A. Yes, the only one we know.

Q. Now, why would it be practicable for your company to have another carrier in that territory?

[fol. 205] A. Well, the carrier now serving that district, being the only one, is frequently quite busy. He has a limited number of boats and there are times when we have to wait several days for him to be able to furnish a boat.

Q. In other words——

A. Now, if there were more than one in the business we would be able to call on another carrier in cases where the one is busy.

Q. In other words, there have been occasions when your shipments have been tied up for lack of equipment?

A. Yes.

Q. And additional equipment is essential for your service?

Exam. Konigsberg: Let the witness testify.

Mr. Eldred: Let the witness.

By Mr. Krisel:

Q. Would you say additional equipment would be essential to your service up the Sound?

A. Yes, it would be very desirable.

Q. Now, do you have any movements, or do you contemplate any movements, of commodities up the Hudson River from Jersey ports?

Mr. Gould: To what port?

Mr. Krisel: Carteret.

Mr. Gould: To where? What destination?

Mr. Krisel: Well, he will tell us. I am just asking a general question.

[fol. 206] The Witness: We haven't had occasion to seek service up the Hudson River until lately. We have had a request for bids on slag, which is a by-product of our copper operation, and a large quantity of slag has been asked for at Peekskill.

By Mr. Krisel:

Q. Peekskill, New York?

A. And we have asked McAllister to bid on a large movement of slag from Carteret to Peekskill, New York. Whether or not the business will develop remains to be seen, but we have asked McAllister for a quotation and it

would be desirable if we could have a service such as to Peekskill.

Q. And have you any idea as to the amount of tonnage that may be involved in that movement?

A. Well, the quantity is stated to be 30,000 cubic yards. That is an estimated quantity.

Exam. Konigsberg: What would that mean in tons, if you have any idea?

The Witness: Well, a cubic yard would be, probably, around two tons.

Mr. Eldred: How many, sir?

The Witness: About two. That is a rough estimate, don't quote me.

Mr. Eldred: No, no.

Mr. Krisel: That is all.

Cross-examination.

By Mr. Eldred:

Q. Mr. Merick, is it?

[fol. 207] A. Yes.

Q. This slag is a bulk commodity, is it not?

A. It is a granulated slag, shoveled.

Q. Shoveled in and out by a steam shovel?

A. Yes.

Q. Now, up to the present time, you have had no occasion to use McAllister to either Bridgeport or New Haven on copper or lead?

A. We have, at different times, asked McAllister to bid, but he has never been competitive.

Q. I see. He never transported for you?

A. No.

Q. Have you made any inquiries to find out whether there are more than one line operating up the Sound?

A. Yes, sir. We know of only one line.

Q. Is that the Blue Line?

A. No, sir. Stewart J. Dailey.

Q. You never attempted to get in touch with McWilliams' Blue Line?

A. No, sir. You mean from Carteret to New Haven?

Q. Yes.

A. No, sir.

Q. Did you know of their services at all?

A. No.

Q. Have you made any other check to find out?

[fol. 208] A. Where do they operate, may I ask?

Q. They operate from the New York Harbor up to Boston.

A. To Boston?

Q. Yes, but all along the Sound. Bridgeport, New Haven are the headquarters.

A. What are they, big steamer operators?

Q. No, barge.

Exam. Konigsberg: How about this other company you mentioned?

The Witness: Stewart J. Dailey.

Exam. Konigsberg: Do you know anything about them?

Mr. Gould: He operates up there.

Exam. Konigsberg: Do they have a permit to operate?

Mr. Gould: Yes, he is a common carrier.

The Witness: He has the territory as a common carrier.

By Mr. Eldred:

Q. In spite of the present emergency and the heavy movement of metals at this time you haven't had any serious difficulty in getting your commodities moved in the harbor, have you, or to New Haven, have you?

A. By water?

Q. By water.

A. Except for delays when Dailey's boats are busy.

Q. Yes. You would say that the volume is, at the present time, much greater than it would be under normal conditions?

A. No, just the reverse. Under normal conditions we [fol. 209] have more tonnage going there because we operate our lead plant under normal conditions and our lead is the heavier commodity.

Q. Well, up to the present time, I mean, even in normal times you have never had any occasion to use McAllister?

A. No.

Mr. Eldred: That is all.

Redirect examination.

By Mr. Krisel:

Q. Mr. Merick, do you know how bulk commodities are usually transported by tug—barge?

A. You mean by bulk, that which can be shoveled?

Q. Shoveled in like slag, sand. Do you know how the transportation usually takes place?

A. Yes, sir.

Q. Well, suppose you tell us.

A. Why, the slag is loaded by——

Q. Do you know whether or not they move in flotilla tows or not?

A. That would be essential in the case of a low grade commodity, yes.

Q. And it might possibly be that there are maybe more than three bulk commodities in a tug, is that correct? It might be sand, gravel, coal, all in one tug?

A. Oh, I presume so, yes.

Q. And sometimes the tows might get mixed up?

Exam. Konigsberg: Mr. Krisel, it may not be material [fol. 210] and these particular leading questions may be all right, but it seems to me you ought to develop. The way you are putting the questions to the witness it calls for a yes or no answer.

Mr. Krisel: Well, I am used to trying cases in court where we always ask for yes or no answers.

Exam. Konigsberg: After all, we are an administrative body and we want the facts from the witness. That may be all right in court.

Mr. Krisel: I am sorry.

By Mr. Krisel:

Q. Is it a fact, if you know, Mr. Merick, that boats contain bulk commodities and non-bulk commodities on many occasions?

A. Well, I am not an operator of barges, of course. As far as we are concerned, our movement would be entirely of slag. Whether McAllister would take any other commodities up with the slag I don't know.

Q. That is right. I see. Now, the James McWilliams Blue Line was mentioned here and you have never used them, have you?

A. I have never heard of them.

Recross-examination.

By Mr. Gould:

Q. Mr. Merick, have you ever heard of McLain Lines?
A. Oh, yes.
[fol. 211] Q. You sign all the contracts for American Metal Company or Mr. Bien?
A. Mr. Bien.

(Witness excused.)

JOHN C. GORMAN was sworn, and testified as follows:

Direct examination.

By Mr. Krisel:

Q. Mr. Gorman, what is your full name?
A. John C. Gorman.
Q. Where do you live?
A. 977 Seventy-eighth Street, Brooklyn, New York.
Q. Where do you work?
A. American-South African Line, Incorporated.
Q. Where do they do business?
A. It is a steamship company engaged in transportation of goods between North Atlantic ports and South and East Africa and return.
Q. Where do they have their office?
A. 26 Beaver Street, New York, New York.
Q. Is your line a member of any conference?
A. Yes, we are a member of the South African-United States Conference and the South African-United States Conference vice versa.
Q. Now, you operate steamships, do you not?
A. That is right, sir.
[fol. 212] Q. Do you know the McAllister Lighterage Line, Incorporated?
A. I do, sir.
Q. How long have you known them?
A. Well, I have known them unofficially for a good many years and in an official capacity, I would say, for the last four years.
Q. Has your line done business with them?

A. We have, sir.

Q. Doing business now?

A. Yes.

Q. What is the nature of the business done between you, your line and the McAllister Lighterage Line?

A. Well, naturally the nature of the business has changed due to the war, but prior to the war we had contracts with the African Metal Corporation in the transportation of copper matte, blistered copper and cobalt between Mira and New York and the African Metal had the option of taking delivery at Carteret on a certain specified tonnage. It was not always feasible and economical for us to put ships into Carteret, and we paid for lighterage to put our goods into Carteret by lighterage.

Q. Under that contract did your line charge through rate to Carteret?

A. Well, what was tantamount to a through rate.

Q. You had to ship in alongside the dock?

[fol. 213] A. That is right.

Exam. Konigsberg: I don't quite understand that. Now, tell me where this rate started and where it went. You have come to the conclusion of a through rate. I want the facts so the Commission can determine whether it is a through rate or not.

The Witness: The rate provided for this blister copper, cobalt and matte to Carteret and we had the option of taking delivery in Carteret in 1500 tons.

By Mr. Krisel:

Q. So that, at the option of the shipper or consignee of the goods, your obligation would be to deliver alongside dock at Carteret?

A. That is quite right.

Q. For the same money?

A. That is right.

Q. And you found that it would be economical to your operation not to do that?

A. That is right.

Q. And what was the nature of the arrangement you had with McAllister Lighterage Line?

A. That is correct.

Q. What was it?

A. We paid them so much a ton for carrying the merchandise from shipside to Carteret.

Q. And from shipside, you mean shipside from some point [fol. 214] in New York Harbor?

A. That is right.

Q. Does that continue now?

A. Well, no. The nature of our business changed through the war. We can't make contracts of our own nature.

Q. How recently was this contract in effect?

A. The last contract ran right up to December, 1941 and then the war came and, naturally, no other contracts were made.

Q. Now, do you know whether that arrangement may continue at any later date?

A. We definitely hope so.

Mr. Krisel: I think that is all, Mr. Gorman.

Mr. Eldred: No questions.

(Discussion off the record.)

(Witness excused.)

JOSEPH J. GLATZMAYER WAS SWORN, and testified as follows:

Direct examination.

By Mr. Krisel:

Q. What is your full name, Mr. Glatzmayer?

A. G-l-a-t-z-m-a-y-e-r, Joseph J.

Q. Where do you live?

A. 237 Baltic Street, Brooklyn, New York.

Q. By whom are you employed, Mr. Glatzmayer?

A. Harbor Carriers of the Port of New York.

Q. Is that a trade association?

[fol. 215] A. It is a marine trade association.

Q. And what is your capacity there?

A. Executive vice-president.

Q. How long have you been the executive vice-president for the Harbor Carriers of the Port of New York?

A. Since its inception in January, 1934.

Q. Prior to that time what was your business?

A. I was connected with Merritt, Chapman and Scott Corporation.

Q. What was their business?

A. Marine transportation, heavy hoisting and salvaging.

Q. Could you tell us generally about how long you have been around the Port of New York in the shipping business by tug and barge?

A. About forty-six, forty-seven years.

Q. Do you remember what happened to the tug and barge industry around 1931, 1932?

A. Just what do you mean, what happened to it?

Q. From the standpoint of the volume of tonnage that moved on the eastern seaboard by tug and barge, coastwise and inland, the amount of traffic?

Mr. Gould: Wait a minute, Mr. Krisel. Eastern seaboard. Are you referring to coastal waterway again? Limit it.

By Mr. Krisel:

Q. Well, I mean limit it, Mr. Glatzmayer, from Maine to Norfolk and down the inland waterway.

A. Well, I wouldn't be able to, I don't believe,—to give [fol. 216] you an intelligent answer to that question without making reference to some statistical information.

Q. How many tug boats do you know of engaged in operation on the eastern seaboard?

Mr. Gould: Well, I don't know that it would make any difference in the application whether there were twenty-five or five hundred.

Mr. Krisel: I am taking these witnesses out of order and this is subject to connection.

The Witness: Do you mean coastwise barges or do you mean inland barges or both?

By Mr. Krisel:

Q. Coastwise, inland barges, dock boats, deck scows. The entire field, how was it affected?

Mr. Gould: I object.

Mr. Krisel: I want to show what the economic conditions were between 1932 and 1939.

Exam. Konigsberg: What is the basis?

Mr. Krisel: The basis of determining the grandfather rights of this applicant.

Exam. Konigsberg: Well, your grandfather rights would begin January 1st, 1940, anyhow.

Mr. Krisel: I see there was no reasonable period, which we are entitled to, either back of 1930 or 1931, and I want an opportunity of proving that there was no way of determining any substantial routes or ports for any one of the [fol. 217] tug and barge operators as of January 1st, 1940, because their tonnage was gone and the traffic was gone and I intend to prove it.

Mr. Gould: What year?

Mr. Krisel: As of January 1, 1940, the critical date, and that is why we have the rule of reasonableness.

Mr. Gould: He represented James Hughes in that case where we proved 1940 was the biggest year we have had.

Exam. Konigsberg: I am not interested in that case. I am trying this case.

Mr. Krisel: That is the purpose of that testimony, to show that routes and ports for tug and barge operators, between 1934 and 1940, had disappeared and there is no way of proving bona fide operation of any of these lines prior to January 1, 1940.

Exam. Konigsberg: Now, after you have made that statement let Mr. Glatzmayer make a statement whether that is a fact, and state it in his own words.

The Witness: To the best of my recollection, the latter part of 1930 the marine business began to fall off. The depression set in and became very pronounced and acute. Some time went by and during the period, I would say, from about 1932 or mid-year 1932, right up to and including a part of 1939, or it may have been the latter part of 1938, there was a very stagnant condition in the entire [fol. 218] marine trade, due to economic conditions.

By Mr. Krisel:

Q. And do you know, of your own knowledge, Mr. Glatzmayer, the extent to which fleets of tugs and barges were laid up in this port?

A. I think that every owner who had any measurable amount of equipment had a very substantial part of it laid up.

Mr. Krisel: Thank you, that is all.

Exam. Konigsberg: All right.

Examination by Examiner

By Exam. Konigsberg:

Q. Now, Mr. Glatzmayer, I respect a man with your years of experience. Let me put it to you this way: to obtain rights under the so-called grandfather rights the date is January 1, 1940. Now, the Commission has said for a reasonable period prior thereto we ought to have information.

A. Yes.

Q. Now, what period back of January 1, 1940, based upon your years of experience, would you say was normal—a normal flow of traffic? Would you say it is one, two, three or four years?

A. I don't believe within that period immediately preceding the very early part of 1939 or the latter part of 1938, from that intervening period of 1932 or 1933, that there was anything approximating what might be called normal conditions in the marine trade.

[fol. 219] Q. Thank you.

A. The business wasn't there.

Exam. Konigsberg: Thank you.

By Mr. Krisel:

Q. How long have you known McAllister?

A. I have known McAllister almost since he was knee high.

Q. Been an old company in this port, hasn't it?

A. Yes.

Q. Had a very extensive fleet?

A. I knew his father and grandfather before.

Q. Extensive fleet, tugs, barges, lighterage, scows and what have you?

A. Sixty, seventy units of various types.

Mr. Krisel: That is all.

Mr. Eldred: No questions.

(Witness excused.)

Exam. Konigsberg: Shall we take a recess?

(Whereupon a short recess was taken.)

JAMES P. MCALLISTER was sworn, and testified as follows:

Direct examination.

By Mr. Krisel:

Q. What is your full name, Mr. McAllister?
A. James P. McAllister.
Q. Where do you live?
A. 940 Albemarle Road, Brooklyn.
Q. And who are you employed by?
[fol. 220] A. McAllister Lighterage Line, Incorporated.
Q. In what capacity?
A. Vice-president and treasurer.
Q. I show you this photostat and ask you to tell us what it is?
A. It is a copy of the certificate of incorporation of the McAllister Lighterage Line, Incorporated.

Mr. Krisel: I offer it in evidence.
Exam. Konigsberg: It will be marked Exhibit No. 1.

(Applicant's Exhibit 1, witness McAllister, received in evidence.)

By Mr. Krisel:

Q. I show you this photostat and ask you what it is?
A. It is a copy of the certificate of incorporation of McAllister Brothers, Incorporated.

Mr. Krisel: I will offer that certificate in evidence.
Exam. Konigsberg: I understood you withdrew 217.
Mr. Krisel: That is all right. I know that.
Exam. Konigsberg: I see.

(Applicant's Exhibit 2, witness McAllister, received in evidence.)

By Mr. Krisel:

Q. Now, Mr. McAllister, referring to applicant's Exhibits 1 and 2, will you tell us the dates on which these two corporations were organized? McAllister Brothers?
A. On the 30th day of March, 1936.
Q. That was for McAllister Brothers?
[fol. 221] A. McAllister Brothers, Incorporated.
Q. And for the Lighterage Line?

A. October 23rd, 1937.

Q. Now, does the McAllister Brothers, Incorporated engage in any operation whatever?

A. They charter a fleet.

Q. Well, do they engage in the physical transportation of merchandise?

A. No.

Q. They own equipment, do they?

A. They own the entire fleet that belongs to McAllister.

Q. By entire fleet do you mean that they own the entire fleet of equipment owned by——

A. By the McAllister——

Q. Brothers, Incorporated?

A. That is right.

Q. And are those vessels chartered bare boat to McAllister Lighterage Line, Incorporated?

A. Yes.

Q. I show you this paper and ask you if that represents the terms under which——

A. Represents the what?

Q. Represents the terms under which the vessels owned by McAllister Brothers, Incorporated are chartered bare boat to McAllister Lighterage Line, Incorporated?

[fol. 222] A. Yes.

Q. And is that paper a certified copy of the minutes of a board meeting of McAllister Lighterage Line, Incorporated?

A. Yes.

Mr. Krisel: I offer it in evidence.

Exam. Konigsberg: It will be marked Exhibit No. 3.

(Applicant's Exhibit 3, witness McAllister, received in evidence).

By Mr. Krisel:

Q. Does the Lighterage Line, the applicant here, operate all of the vessels owned by McAllister Brothers?

A. Yes.

Q. Now, prior to the incorporation of these two companies, where did the fleet reside?

A. Physically?

Q. Yes, who owned them?

A. They belonged to a partnership.

Q. What was the name of that partnership?
A. McAllister Brothers.
Q. And who were the partners?
A. James P. McAllister, my father; W. H. McAllister and John E. McAllister.
Q. And W. H. McAllister is your uncle?
A. That is right, and John E. McAllister is my uncle.
Q. And John E. McAllister was your uncle?
A. That is right.
Q. So that those three partners were brothers?
[fol. 223] A. That is right.
Q. And for how long did the three brothers, under the name of McAllister Brothers, conduct the business?
A. I would say between back around the last war, 1916 to 1918, somewheres around that.
Q. And prior to 1916 to 1918, how was the business conducted and by whom?
A. It was a partnership composed of my grandfather and his brothers.
Q. So that was your grandfather and your granduncles?
A. I understand my father was a partner, also.
Q. How far back did that partnership go, the last one?
A. That particular partnership went back to around 1900 or 1898.
Q. Was there any partnership beyond that?
A. Before that there were other individuals in partners.
Q. With that group?
A. Yes.
Q. And how far back did that partnership go?
A. A good number of years, I don't know how far back, but the company went back to the founding by my grandfather in 1864.
Q. And which grandfather was that?
A. My own.
Q. What was his name?
A. James McAllister.
[fol. 224] Q. And James McAllister, your grandfather, founded the partnership in 1864, the very first partnership?
A. That is right.
Q. And that was succeeded by the successive partners and the equipment passed on into these partnerships?
A. Right along.
Q. And it is this equipment and accessory equipment and new equipment which is now in McAllister Brothers?

A. It is the same fleet. In fact, we have some vessels that are forty-five years old, or older, today that were owned by my grandfather.

(Discussion off the record).

By Mr. Krisel:

Q. I show you this paper and ask you to tell us what it is.
A. It is a schedule of our chartered equipment, operated by McAllister Lighterage Line, Incorporated, as of January 1st, 1938.
Q. You mean equipment owned by McAllister Brothers?
A. It is owned by McAllister Brothers.
Q. And chartered?
A. Chartered to McAllister Lighterage Line, Incorporated.
Q. Under the terms of Exhibit 3?
A. Already in evidence, yes.
Q. And was that prepared from your books, records and documents?
A. It was.
[fol. 225] Q. Kept in the regular course of business as of January 1, 1938?
A. Yes.

Mr. Krisel: I offer it in evidence.
Exam. Konigsberg: It will be marked Exhibit No. 4.

(Applicant's Exhibit 4, witness McAllister, received in evidence).

By Mr. Krisel:

Q. I show you another paper and ask you to tell us what that is.
A. It is a similar list as of January 1st, 1940.
Q. Of equipment?
A. Of equipment.
Q. Owned by McAllister Brothers?
A. Owned by McAllister Brothers and chartered to McAllister Lighterage Line, Incorporated.

Mr. Krisel: I offer that in evidence.
Exam. Konigsberg: It will be marked Exhibit No. 5.

(Applicant's Exhibit 5, witness McAllister, received in evidence).

By Mr. Krisel:

Q. I show you another paper and ask you to tell us what it is.

A. It is a list of the fleet owned by McAllister Brothers and chartered to McAllister Lighterage Line, Incorporated, as of September 6th, 1943.

Mr. Krisel: I offer that in evidence.

Exam. Konigsberg: Off the record.

(Discussion off the record).

[fol. 226] By Mr. Krisel:

Q. Mr. McAllister, referring to these exhibits which have just been placed in evidence, in addition to the vessels shown on that exhibit which represent vessels owned by McAllister Brothers and chartered to McAllister Lighterage Line, Incorporated, there are other vessels which you chartered on a per diem bareboat basis, are there not?

A. Yes, also day to day basis, fully equipped and crewed.

Exam. Konigsberg: It will be marked Exhibit No. 6.

(Applicant's Exhibit 6, witness McAllister, received in evidence).

By Mr. Krisel:

Q. Are those vessels, shown on Exhibit 6 as of September 6th, 1943, both owned and chartered—are they in operation today?

A. Yes.

Q. All of them?

A. There may be a change in some of the vessels owned by other companies rather than McAllister Brothers.

Q. You mean those that are chartered to you from outsiders?

A. That is right.

Q. And not from McAllister Brothers from day to day?

A. That is right, that varies.

Q. With that exception, all these vessels are in service, is that correct?

A. That is right.

Q. Now, I notice, on Exhibit 6, that as to the tugs, under the heading of "Capacity"—"Carrying Capacity"—where [fol. 227] the vessel is described as a tug, there are figures.

A. That is right.

Q. Now, what do those figures represent?

A. They indicate the horsepower.

Q. Horsepower, as distinguished from the carrying capacity of the barges?

A. That is right.

Q. Now, could you tell us generally where this equipment is capable of operating?

A. If you refer to the tug boats——

Q. Well, suppose you look at the exhibit. Take the 1943 exhibit, Exhibit 6, and as briefly and as quickly as you can describe—pick out some samples of the equipment and tell us what different equipment will serve what different waterways.

A. Well, most of the equipment here will go down the Sound as far as Boston—and by that I am referring to the barges, derricks, scows—and short trips down the coast, Jersey coast.

Q. How far down the Jersey coast?

A. Well, we have gone to Atlantic City, points like that.

Q. Could they go to Philadelphia?

A. Yes, some of them could. Then we have barges here that could go anywheres on the coast.

Q. You mean on the ocean, on the high seas?

[fol. 228] A. Yes.

Q. And the smaller equipment would go along the inland waterways?

A. The smaller equipment would go along the inland waterways.

Q. Through the Chesapeake and Delaware Canal?

A. Yes.

Q. And could they navigate the Hudson River?

A. Yes. Long Island Sound, anywheres that would be comparable.

Q. How about the big tugs?

A. We have tugs here that could go well around the world, for that matter, coastwise, and we have some tugs always prepared to go coastwise. They are licensed and prepared at a moment's notice to go.

Q. Now, do you maintain insurance?

A. We do.

Q. I show you this paper and ask you to tell us what it is.

A. It is a schedule of the insurance premiums, valuation, and the sum insured of the vessels owned by McAllister Brothers and operated by McAllister Lighterage Line.

Q. And does it also show the navigating limits?

Exam. Konigsberger: Let the witness finish.

Mr. Krisel: I am sorry.

The Witness: It is a list of the self propelled vessels, tow boats, and it gives the navigating limits under the policies.

[fol. 229] By Mr. Krisel:

Q. And is that insurance in effect now?

A. It is in effect now.

Mr. Krisel: I offer it in evidence.

Exam. Konigsberg: That will be No. 7.

(Applicant's Exhibit 7, witness McAllister, received in evidence).

By Mr. Krisel:

Q. Now, Mr. McAllister, with reference to Exhibit 7, is that insurance placed with the Tugboat Underwriting Syndicate?

A. Yes.

Q. You have had other policies, have you not?

A. We have had, in the past, yes.

Q. Do you know the limits insured in your previous policy?

A. I know we had coverage on the coast. What the exact limits were I don't know.

Q. Well, referring to Exhibit 7, could you tell us from recollection whether the limits in the expired policy were broader than the limits in this policy?

A. Yes. I know that we were covered as far as Eastport, Maine in the previous policy and down to Norfolk—that is here. I don't remember the southern termination of that policy.

Q. Do you know why insurance sometimes varies in so far as navigating limits are concerned?

A. Well, a very definite factor today is the war risk involved and we cut the limits due to the fact that at an overnight's notice we could extend the coverage to further

[fol. 230] points which are very expensive as a genera policy.

Q. But you can change your navigating limits at any time?

A. That is understood with the insurance company.

Q. Now, could you tell us whether you have any other tugs, self propelled vessels, which are not listed on Exhibit 7, which are not listed there?

A. Yes.

Q. Are they covered by insurance?

A. Some of them were under repair at this time and were covered with insurance as lay-up, and are not here as an operating vessel.

Q. But if they go into operation?

A. They will automatically be placed back on the schedule.

Q. Now, suppose you tell us briefly the nature of the business conducted by the partnerships before the formation of these corporations.

Mr. Eldred: Well, now, Mr. Examiner, I don't think we need to go back to the Civil War here.

By Mr. Krisel:

Q. No, we will go back, say, about—start with around 1920. Tell us generally what you did between 1920 and 1930.

A. At that time the partnership operated a fleet of a hundred or more vessels, of almost every description you could think of, in inland waterways and coastwise, such as coastwise barges, covered barges, heavy lift derricks, [fol. 231] lighters, scows, tugs, freighters, excursion boats, and a very large fleet of tankers for the Government which operated around the world.

Q. You mean the excursion boats?

A. The tankers.

Q. The tankers?

A. The tankers operated around the world.

Q. Could you give us a little more definitely, with reference to tug and barge operations, the territories that were approximately covered during that period, between 1920 and 1930?

A. They operated along the entire coast and Gulf ports.

Q. Fron. where to where?

A. As far as Canada and into the Gulf ports. I am talking now about the tug and barge operations.

Q. Talking now about the tug and barge operations?

A. Yes.

Q. Say you covered Maine, Massachusetts, Rhode Island?

A. Yes, and all around the Gulf points. And, also, a tug and barge service was operated to Cuba.

Q. Could you tell us the general nature of the commodities that were transported at that time?

A. We handled every kind of commodity you could think of, packaged freight, bulk freight, everything you could think of.

Q. I show you this paper and tell us, if you please, what that is.

A. It is a letter head of the McAllister Lighterage Line, [fol. 232] Incorporated.

Q. What does it say?

A. On the letter head it gives the types of equipment we own, charter and also describes our towing operations as "towing anywhere."

Mr. Krisel: I offer it in evidence.

Exam. Konigsberg: It will be marked Exhibit No. 8.

(Applicant's Exhibit 8, witness McAllister, received in evidence).

By Mr. Krisel:

Q. How long, Mr. McAllister, has that letter head been in effect?

A. In effect? Its been that way as long as I have been with the company.

Q. I show you this paper and ask you to tell us what it is.

A. It is a bill head of McAllister Lighterage Line, Incorporated, stating towing, transportation and general lighterage, Hudson River, Harbor, Sound and Coastwise towing.

Exam. Konigsberg: It will be marked Exhibit No. 9.

(Applicant's Exhibit 9, witness McAllister, received in evidence).

By Mr. Krisel:

Q. I show you this—call it a blotter—

A. It is a blotter.

Q. And I ask you how long you have been using these blotters?

A. Oh, I would say as long as I have been with the company I have been familiar with this type of blotter.

Q. And what do you do with the blotter besides blotting?

[fol. 233] A. Distribute them amongst the trade in New York.

Q. What trade?

A. Anywheres that we think they will give us business.

Q. Where you will get business?

A. Yes.

Q. Do you solicit business personally?

A. Yes.

Q. And whom do you solicit business from?

A. Any shipper that I think there is any possibility of getting business from.

Q. Do you make any discriminations as to shippers, except from the standpoint of credit risks?

A. No.

Q. And do you take any business wherever your boats will go?

A. Yes.

Mr. Gould: May I ask a question, please? When were these printed?

The Witness: These, I would say, are ten years old, at least. These particular blotters.

Exam. Konigsberg: The blotters will be marked Exhibit No. 10.

(Applicant's Exhibit 10, witness McAllister, received in evidence).

By Mr. Krisel:

Q. Now referring to several papers which I just handed you, will you tell us what those papers are?

A. They are copies of advertisements that we have been running in different trade magazines, newspapers and [fol. 234] marine activity periodicals.

Q. Yes. Tell us what papers and magazines they went in and the dates.

A. The first one here was in the Journal of Commerce, April 20th, 27th and May 4th and May 11th of 1943. Then the Maritime Activity Reports, April 15th, 22nd, 29th, May 6th and 13th, 1943.

The Herald Tribune, April 26th, May 10th, 1943.

New York Times, April 19th, May 3rd, 17th, 1943, and Marine Engineering in May.

Q. All right, I think that is enough.

Mr. Krisel: I will offer those in evidence, Mr. Examiner.

Exam. Konigsberg: They will be marked Exhibit No. 11.

(Applicant's Exhibit 11, witness McAllister, received in evidence).

(Discussion off the record).

Exam. Konigsberg: Exhibit 11, consisting of two sheets, 1 and 2.

By Mr. Krisel:

Q. Now, would you turn down any business now, Mr. McAllister, if you were able to get it?

A. Right now we may not be in a position to take any other, other than the war work we are doing today.

Q. Now, will you explain to us where your entire fleet is now working?

A. I would say almost exclusively within the confines of New York Harbor.

[fol. 235] Q. Can you tell us why that is so?

A. We have contracts, in addition to our ordinary war business, which we are hard put to to meet today.

Q. Did you place your entire fleet at the disposal of the war effort?

A. Yes, sir.

Q. And was that particularly true from the inception of war movements of cargos?

A. Yes, sir, around 1940.

Q. Are you now operating any vessels for the United States Government?

A. Yes, we are operating three tugs.

Q. Are they big tugs?

A. Yes, they are 1000 horsepower steel Diesel tugs.

Q. And where are those big tugs operating?

A. They are operating almost exclusively in New York Harbor, but we must be prepared to send them coastwise or ocean going at a moment's notice.

Q. Now, you have been in this business how many years did you say?

A. Twenty years, about. That is, steadily, and before that I worked summers.

Q. You heard the testimony of Mr. Glatzmayer this morning, did you not?

[fol. 236] A. Yes, sir.

Q. Would you concur in the statements Mr. Glatzmayer made with reference to economic conditions between 1932 and 1939?

A. I would say that the depression was felt a little sooner than 1932 in New York Harbor. 1930 is the year I remember when business really slumped off. It became progressively worse until 1937 was the first year where there were some signs of life, but nothing much to talk about.

Q. Well, how did you notice the general conditions, as far as the tug and barge traffic was concerned, on the eastern seaboard?

A. Practically none at all.

Q. To what extent was your fleet tied up in 1932 to 1939?

A. Well, I saw us go from over a hundred vessels in operation in 1930 to approximately one tug and about four or five barges in 1935.

Q. And what happened after 1935?

A. After 1935 there was a very gradual pickup till 1937 and then there was a slump off again until 1940.

Q. When the war business started?

A. When the war business, which was the first real pickup in New York Harbor.

Q. I show you this paper and ask you if that represents your freighting operations by tug and barge from January 1, 1931 through December 31, 1942, and ask you whether [fol. 237] those movements were taken from the books, records and documents of the applicant and its predecessor partnerships as kept in the regular course of business, and under your supervision?

A. That is correct.

Mr. Krisel: I offer it in evidence.

(Discussion off the record.)

Mr. Krisel: I offer that in evidence as Exhibit 12, composed of sixteen separate sheets.

Exam. Konigsberg: It will be so marked.

(Applicant's Exhibit 12, witness McAllister, received in evidence.)

By Mr. Krisel:

Q. Now, Mr. McAllister, if you will refer to Applicant's Exhibit 12, you will note that there is a break in your operations from 1932 up to January 1, 1937, is that correct?

A. That is correct.

Q. And to what do you ascribe the failure of any evidence of operations between that period?

A. It is entirely due to the depression. There was just no business to be had. We were confined to a very small operation in New York Harbor during that period.

Q. And subsequent to December 31st, 1937 your operations are limited to New York Harbor, is that correct?

A. That is right.

Q. And is that due to the reasons you have just testified to?

A. No, when business became available we had already [fol. 238] started on our war operations. By war operations I mean operations for our allies even before this country went into war.

Q. I see, and your entire fleet is now devoted——

A. Our entire fleet was necessary to perform those operations.

Exam. Konigsberg: Well, why didn't you show operations for the years 1938 and 1939.

The Witness: Because, as I explained before, there had been another drop in business, still due to the depression, and it was around 1939 and 1940 when we really started out again.

Exam. Konigsberg: Yes, but you don't show anything at all.

The Witness: That is right. There was nothing to be had.

Exam. Konigsberg: And that was the period when you were operating one tug?

The Witness: No. As I say, the one tug and two barges was the lowest ebb, about 1935. From then on there was a gradual pickup, but what business there was available to us was for local points only.

Exam. Konigsberg: See if I understand you, Mr. Krisel. In so far as your grandfather rights are concerned you might as well say you rely on the data furnished in this exhibit, indicating transportation beginning with January 1, 1940 to whatever date it runs?

Mr. Krisel: No, not at all.

[fol. 239] Exam. Konigsberg: Let me finish my thought. Through December 31st, 1942, plus the showing prior thereto, when there was some business?

Mr. Krisel: That is correct, Mr. Examiner.

Exam. Konigsberg: All right.

By Mr. Krisel:

Q. Now, Mr. McAllister, you testified that at one occasion you had all of your fleet tied up, with the exception of maybe one tug and a few barges?

A. Yes, sir.

Q. This is during this depression period?

A. Yes, sir.

Mr. Eldred: That was 1935, is that right, that was in 1935?

The Witness: That was in 1935. The low ebb.

By Mr. Krisel:

Q. The low ebb. What happens to boats when they get tied up, laid up?

A. Well, most of our craft were wooden vessels and if they are allowed to lie idle they dry out and when they dry out the calking, the oakum, leaves the seams, rain water opens the seams and they rot very badly. I have seen a good wooden boat rot in two years.

Q. And did your company have to repair these boats as business developed?

A. We spent a tremendous amount of money to get these boats in good repair.

[fol. 240] Q. Now, describe for us the method by which tug and barge movements take place, such as flotilla tows.

A. Flotilla tows, such as we have,—I will take a particular route from New York Harbor shipside to, say, the various refineries on Kill van Kull, Arthur Kill and the Raritan River. Our despatchers will map out a flotilla tow for a particular tug and helping tugs.

Q. Do you know what a bulk commodity is?

A. Yes, sir. A bulk commodity is normally something that is handled by shovel and no particular count is taken.

Q. And it doesn't necessarily have to be stowed?

A. It doesn't have to be stowed. It may be trimmed.

Q. Now, could you tell us, from your experience as a tug and barge operator, whether it is profitable to operate by simply towing one barge with one bulk commodity?

A. No, we couldn't compete.

Q. And is that why you have to arrange your tows in flotillas?

A. That is right.

Q. And is it physically possible to despatch profitably flotilla tows with less than three bulk commodities or commodities not mixed?

A. At times, if you have enough of the one commodity, it would be, but usually they are mixed up in a flotilla tow.

Q. Well, would you say that it is two?

A. It is not normal operation to be able to get all one [fol. 241] commodity in one tow.

Q. Not a practical operation?

A. No, sir, you couldn't make money if you depended on that only.

Q. And, as a matter of fact, does that tak place?

A. No, as I say, it is an exceptional case.

Q. Now, there was some testimony here this morning from Mr. Gorman with reference to your lighterage service for the American-South African Line?

A. Yes, sir.

Q. Under an arrangement whereby the steamship line paid you for the service?

A. Yes, sir.

Q. Those goods came from outside the harbor limits?

A. Yes, sir, foreign ports, usually.

Q. And you lightered them from within the harbor to another point within the harbor?

A. Yes, sir.

Q. For this steamship line?

A. Yes, sir.

Q. Now, did you have any similar arrangements with other steamship lines?

A. Yes, we did with other steamship lines, also.

Q. What steamship lines did you have such similar arrangements for continuous movement?

[fol. 242] A. I would say we did work for the Robin Line, some for the Isthmian Line, for the United States Lines. In fact, it was liable to happen with almost any steamship company in New York.

Q. Have you any of those arrangements now in existence?

A. No, because of the war all such arrangements have been cancelled, but if any such movements come we get them without contract.

Q. I show you this paper, consisting of thirteen sheets, and ask you if that represents your towage operations from January 1, 1933 to December 31st, 1942, as taken from the books, records and documents of the company kept in the regular course of business, and through its predecessor partnerships, under your supervision?

A. Yes.

Mr. Krisel: I offer that as Exhibit 13, consisting of thirteen sheets.

(Applicant's Exhibit 13, witness McAllister, received in evidence.)

By Mr. Krisel:

Q. Mr. McAllister, who are the stockholders of McAllister Brothers?

A. At present they are W. H. McAllister, A. J. McAllister, G. M. McAllister and myself.

Q. And who are the stockholders of the McAllister Lighterage Line, Incorporated?

A. W. H. McAllister, Stephen Meehan and myself.

[fol. 243] Q. Who is Stephen Meehan?

A. He is secretary of the McAllister Lighterage Line, Incorporated.

Q. Well, is he one of the family?

A. Almost; he has been employed by our company for forty years, or something like that.

Q. So that these two corporations are family corporations?

A. That is right.

Q. Now, I show you, Mr. McAllister, a paper consisting of two sheets and ask you if that is a consolidated balance sheet and profit and loss statement as of October 31, 1938, of McAllister Brothers and McAllister Lighterage Line, as taken from your books, records and documents?

A. Yes, it is.

Mr. Krisel: I offer it in evidence.

Exam. Konigsberg: That will be marked Exhibit 14.

(Applicant's Exhibit 14, witness McAllister, received in evidence.)

Mr. Krisel: Consisting of two sheets.

By Mr. Krisel:

Q. I show you another paper, consisting of two sheets, and ask you if that represents a consolidated balance sheet of McAllister Brothers and McAllister Lighterage Line of October 31st, 1940?

A. Yes, it is.

Mr. Krisel: I offer that in evidence—two sheets.

[fol. 244] Exam. Konigsberg: It will be marked Exhibit 15.

(Applicant's Exhibit 15, witness McAllister, received in evidence.)

Q. I show you another paper, consisting of two sheets, consolidated balance sheet of McAllister Brothers and McAllister Lighterage Line, of July 31, 1943, and ask you if that was taken from your books and records?

A. Yes, it is.

Mr. Krisel: I offer that in evidence as Exhibit 16, consisting of two sheets.

Exam. Konigsberg: It will be marked Exhibit 16.

(Applicant's Exhibit 16, witness McAllister, received in evidence.)

By Mr. Krisel:

Q. Now, Mr. McAllister, when this war is over what are you going to do with this fleet?

A. Unless we can acquire some business for them, why I guess we will go out of business.

Q. Are you prepared to make this fleet available wherever the vessels can safely operate in waterways for general commodities?

A. We will try, to the best of our ability, to get business for them wherever we are permitted to operate.

Q. Are you willing to take that business?

A. Definitely, we are.

Q. Are you prepared to state now what particular waterways you are prepared to serve with this fleet?

[fol. 245] A. We wish to feel free to operate as we always have in the past, wherever business cropped up, anywheres on the coast, oceanwise or foreign ports, Gulf, anywheres we could operate.

Mr. Krisel: That is all.

Cross-examination.

By Mr. Eldred:

Q. Did you notarize the application that was filed in this proceeding?

A. I couldn't remember which ones I did and I did not. I have notarized a good many documents.

Mr. Krisel: He signed some of the affidavits.

(Discussion off the record.)

The Witness: Yes.

By Mr. Eldred:

Q. You did. And you were familiar with the contents of the application?

A. Yes, sir. I would have to refresh myself, I guess, on some points.

Q. Well, now, as I understand it, that only asked for the right between waters in New York and New Jersey, is that correct?

A. That may be so. I don't know, I don't think so. It was never my intention, I know that.

Mr. Krisel: Which one are you looking at, Mr. Eldred? The Lighterage Line or the Brothers?

Mr. Eldred: The application we are now hearing.

By Mr. Eldred:

Q. Who prepared this application?

[fol. 246] A. Either my brother, Gerard McAllister, or Mr. McCune.

Q. Are you familiar with its contents?

A. Yes, sir.

Q. Well, now, how is it then that you only asked for those three states, New York, New Jersey and Connecticut?

A. I can't answer that right now. All my discussions regarding this was that we shouldn't be restrieted to any particular area.

Q. On this Exhibit 7——

Exam. Konigsberg: Well, as a matter of fact, gentlemen, let us get down to the fine points. I am just trying to get to the true facts.

Mr. Eldred: That is what I am interested in.

Exam. Konigsberg: When you signed that application is it a fact or is it not a fact that you were familiar with the rules and regulations that were required and just signed it as a matter of course?

The Witness: I am the operating manager of the company and I am not familiar. I put myself in the hands of the attorneys and looked to them for the proper setup. I always thought we were applying for much broader territory than that.

Exam. Konigsberg: And just in the regular course of events they came to you and said, "Brother, this is what you have to sign"?

The Witness: That is right. I am signing documents all [fol. 247] the time.

Exam. Konigsberg: That is just the point. No use beating around the bush.

Mr. Gould: That is right.

By Mr. Eldred:

Q. On Exhibit 7, this insurance policy, when did this present policy that you have a certified abstract here go into effect, do you know, Mr. McAllister?

A. I think the present one went into effect early in July, around July 6th or 7th, something like that.

Q. I see. On Exhibit 12 is it correct to say that all the movements subsequent to January 1, 1940 have been between points within the New York Harbor as described by the Interstate Commerce Commission?

Mr. Krisel: I will concede that.

Exam. Konigsberg: I think it is only fair for the witness to have in front of him a map in Ex Parte 140.

Mr. Eldred: Yes.

Exam. Konigsberg: Here is the map. (Hands same to witness.)

The Witness: Would you mind repeating that question, Mr. Eldred?

Exam. Konigsberg: Let the reporter read it back.

Mr. Eldred: Yes.

(Question read.)

Mr. Eldred: In Ex Parte 140.

[fol. 248] Mr. Krisel: I will concede it, Mr. Examiner.

Exam. Konigsberg: I would rather the witness answer the question. He has got it in front of him.

The Witness: These schedules show that practically all the particular movements by ourselves are within the geographical confines of New York, as outlined by the ICC.

By Mr. Eldred:

Q. All right. Well, now, Mr. McAllister, you are not here to state that there wasn't any traffic moving out of New York Harbor to points along the eastern seaboard or up the Hudson River between December 31st, 1937 and January 1st, 1940?

A. No, I don't make any such statement, but I do say that the volume of business available for the carriers was so far below normal that only some of them could participate in it.

Q. Well, now, what do you call normal, sir?

A. I would say the period in the twenties, up to 1930. Our fleet didn't vary much all the way back from around 1914 up to around 1930. We were able to keep busy all during that period.

Q. Well, now we will take Exhibit 13. Starting with January 1, 1935, I note that P. F. Martin, Incorporated, Philadelphia, is the shipper. Isn't P. F. Martin a water carrier?

A. I guess he is. No, I think P. F. Martin is a towing company. They may own some barges, also.

Q. Do you know whether or not they have authority from [fol. 249] the Interstate Commerce Commission or whether they have filed an application with the Interstate Commerce Commission seeking permission as a water carrier?

A. Not definitely, but I assume they have.

Q. Now, let us turn over to a page for 1936. You do know that the Blue Line, Incorporated is a water carrier, do you not?

A. Yes.

Q. And has filed application with the Commission?

A. Yes, I remember reading their applications.

Q. Now, we will turn over the page again. This movement for the Bouker Company is transportation of mud out to sea and back?

A. Some kind of refuse, yes. Out to sea, dump and return.

Q. And for the McAllister Tankers Corporation. What is that, were they a water carrier at that time?

A. Yes, sir, a carrier. I would call them a carrier.

Q. Yes. What were they engaged in?

A. Transporting petroleum products in bulk.

Q. And what did you do for them?

A. Well, that corporation—well, at that period there was another party interested but the McAllisters held the control and operated that development.

Q. Yes, well, I mean what was the actual physical operation in so far as towing? What did you tow, sir?

[fol. 250] A. That is a self propelled vessel.

Q. The tanker?

A. The Tanker Greene is a self propelled vessel.

Q. I see, and it was entirely——

A. The Tanker Greene is a self propelled vessel.

Q. And it is a tanker?

A. That is right.

Q. Built for liquid cargos?

A. That is right.

Q. Now, will you turn over the page, sir, again, to the year 1938, Merritt, Chapman and Scott?

A. Yes, sir.

Q. They hold authority from the Commission and have applications on which they have been granted authority?

Mr. Krisel: Well, now, I must object to that, because many operations of Merritt, Chapman and Scott were not in carrier service.

By Mr. Eldred:

Q. All right. Now, what did you do for them, what did you tow here?

A. We tow—in fact, we do most of their towing today.

Q. Yes; well, what did you tow in 1938, say?

A. Well, this is a record of a tow outside of New York Harbor, on this sheet, to Hempstead Harbor, or from Hempstead Harbor to Brooklyn.

Q. Yes. Well, what was it that you towed?

[fol. 251] A. A derrick.

Q. A derrick. Contractor's floating equipment?

A. Well, I wouldn't call her a contractor's floating equipment. She is a type of craft used for making heavy lifts which I wouldn't normally call contract.

Q. Would you call it salvage?

A. It might have been, or it might have been machinery or any commodity. We don't know what commodities are on these derricks. It varies.

Q. But Merritt, Chapman and Scott do have that right as a water carrier to transport those commodities, do they not?

A. I imagine they would.

Mr. Krisel: Do you know?

The Witness: I have never seen their actual authority.

By Mr. Eldred:

Q. I see. Now, the year—there is nothing listed, am I correct, for the year 1939?

A. That is right.

Q. 1940, a movement of building material from South Amboy to South River. Isn't that within the harbor limits described in Ex Parte 140?

A. I would have to look at that, but I don't think it is. I think it is excluded.

(Discussion off the record.)

By Mr. Eldred:

Q. You would say they were within the harbor limits?

[fol. 252] A. I would say it was within, according to the map. (Consulting map.)

Q. Yes, and for the year 1941 all the towing operation was for either Merritt, Chapman and Scott or towing for the McAllister Tankers?

A. That is right.

Q. Which was towing of liquid cargo?

A. That is right.

Q. And for the year 1942 all of it has been for the Merritt, Chapman and Scott Corporation, with the exception

of one movement here from Gravesend Bay, New York to Iona Island, New York. Now, who was that for?

A. James Healing Corporation.

Q. Are they a water carrier?

A. They must be, I imagine. I don't know.

Q. You don't know?

A. I don't know.

Q. That was ammunition?

A. That is right.

Mr. Eldred: Yes; that is all, Mr. McAllister.

Redirect examination.

By Mr. Krisel:

Q. Now, Mr. McAllister, the Tanker Greene, as you said, was a self propelled boat?

A. That is right.

Q. Are there occasions when you have to tow a self [fol. 253] propelled boat?

A. There are occasions when she broke down.

Q. And are those the occasions that you stated that you towed it?

A. Yes, that was the time we had to tow it.

Q. You had to tow that self propelled boat?

A. Yes.

Q. Now, in answer to Mr. Eldred's question about your operations after January 1, 1940 being confined in New York Harbor, you stated that there was tonnage moving around outside of New York Harbor and that you did not have any of it?

A. Yes, that is right.

Q. Now, was it because your vessels were tied up with the war effort that you were not getting any of that tonnage?

A. That is right. We had to refuse work. We couldn't possibly take any equipment away from those operations.

Q. And can you now take any tonnage outside of the harbor limits where your vessels are tied up with the war effort?

A. No, today we are running behind all the time in our work.

Q. What has happened to some of your boats, have they been requisitioned by the Government?

A. Yes, we have two large sea-going tugs that have bee requisitioned by the Government.

Mr. Krisel: That is all.

(Whereupon a short recess was taken.)

[fol. 254] Recross-examination.

By Mr. Gould:

Q. You are not looking for rights on the New York State Barge Canal, I understand, am I right?

A. No.

Q. How about the intercoastal waterway?

A. I think we talk about Norfolk there, in the application there.

Exam. Konigsberg: Well, that is a little bit different from what Mr. Krisel said in the beginning. I understood him to say from Maine to South Carolina, inclusive.

Mr. Gould: That is right.

Mr. Krisel: As I amended it it came down to North Carolina.

Exam. Krisel: You said South Carolina.

Mr. Krisel: I meant North Carolina, I am sorry.

By Mr. Gould:

Q. When was the first time you towed a barge or towed anything to North Carolina? What particular port?

A. I don't have any recollection of any towing, but I know that in a freighting operation we had between New York and Philadelphia, by trans-shipment, we participated in a movement to points south.

Q. That is steamer out of New York Harbor?

A. We operated steamer and barges and tugs from the Delaware Canal to Philadelphia and we had arrangements with Green Line to operate to Norfolk.

[fol. 255] Q. Is the Green Line operating now?

A. I don't know. We ceased that operation when the canal was closed by the owner.

Q. That is many years ago?

A. That is about 1933.

Q. But you never operated on any port intercoastal south of Philadelphia?

A. No.

Q. How far north did you operate?
A. We operated right up into the mouth of the canal.
Q. What type of commodity?
A. We towed barges with various commodities up to Waterford and then we had a large derrick go into the canal and work on the locks in there.
Q. You mean you towed flotilla barges?
A. Yes, we frequently towed flotillas for the various operators from the canal down.
Q. To New York Harbor?
A. To New York Harbor and tows back.
Q. You never issued bill of lading on that, did you?
A. No, that was a towing operation.
Q. That was an operation for another carrier and he paid you the towing, that was his flotilla to New York Harbor?
A. That is right.

By Mr. Krisel:

Q. Were there any shipper owned barges in those tows, [fol. 256] barges owned by industrial——
A. I imagine so. They were large fleets and could be owned by shippers or anybody.

Mr. Krisel: That is all.
Exam. Konigsberg: If there is nothing further you are excused.

(Witness excused.)

THOMAS F. SMITH was sworn, and testified as follows:

Direct examination.

By Mr. Krisel:

Q. Your full name, Mr. Smith?
A. Thomas F. Smith.
Q. Where do you live?
A. Woolostan, Massachusetts.
Q. Massachusetts?
A. That is right.
Q. Are you employed in New York now?
A. Temporarily, yes.
Q. And by whom are you employed?

A. Maxwell Harris, and Harris and Company, Incorporated, jointly.

Q. Mr. Harris has a business in Massachusetts—Boston?

A. Yes.

Q. Does he also maintain an office in New York?

A. Temporarily, yes.

[fol. 257] Q. Commodore Hotel?

A. Commodore Hotel.

Q. What is Mr. Harris' business?

A. Ship brokerage.

Q. By ship brokerage what do you mean?

A. Well, bringing the barge or other vessel together with the party who would have a cargo to transport.

Q. You mean he would arrange for the transportation of goods for shippers' account by tug and barge?

A. That is right.

Q. And how long have you worked for Maxwell Harris?

A. Eight years.

Q. Have you been connected with the tug and barge industry for many years?

A. Yes, sir, twenty-seven.

Q. Twenty-seven years?

A. Yes.

Q. Before you were with Maxwell Harris who were you with?

A. I was in business for myself prior to that, representing some barge fleets in Boston, and then, previous to that, with the Government.

Q. What do you do for Maxwell Harris now?

A. Act as a traffic manager and coordinate the movement of coal, principally, here in New York.

Q. At this time?

[fol. 258] A. At this time, yes.

Q. Most of your work is now connected with the coal movement up the Sound to New England?

A. Yes, 90 per cent of it is.

Q. In connection with the war effort?

A. That is right.

Q. Was Mr. Harris a coordinator of coal movements?

A. Yes, to a large extent he is.

Q. And are you familiar with Mr. Harris' methods of conducting his business?

A. Yes, sir.

Q. Suppose you tell us how he arranges for transportation by tug and barge of various commodities for shipper accounts.

A. Well, in the first place, of course the cargo has to be present in order to provide employment for the vessel. The people who own those cargos and want them moved get in touch with Harris, who provides the most suitable vessel and the most suitable means for moving it.

Q. In other words, he picks out the boat for which this cargo is suitable?

A. Most suitable.

Q. And this is in the tug and barge business?

A. That is right.

Q. And does Mr. Harris specialize principally in the furnishing of transportation to shipper accounts by tug and barge?

[fol. 259] A. Yes, he does.

Q. Could you give us an estimate in percentages of the volume of traffic that Mr. Harris arranges for by tug and barge compared to other brokers?

A. Well, I don't know what volume other brokers do. I know that Mr. Harris, in round figures, is moving around 3,000,000 tons of commodities a year at the present time.

Q. Would you say that he controls a very substantial portion of the tonnage by tug and barge?

A. He does, a great proportion of it.

Q. Probably most of it, does he not?

A. Most of it, yes.

Q. Now, give us, briefly, a description of the nature of the commodities that Mr. Harris handles, arranges for transportation.

A. Well, we arrange, as far as we can—we confine ourselves to the bulk commodities, due to the inherent nature of the barge, without the handling gear, etc. Coal, fertilizer, steel and iron scrap, loose bags and various and sundry other commodities. (Consulting document). Gypsum rock, gypsum products, cement, sulfate rock, both out of Maine. That is his only—

Q. His only operation out of Maine?

A. Yes.

Q. When does the season start?

[fol. 260] A. Usually from October to March.

Q. When does it stop?

A. The seed potatoes move to the south in March.
Q. Is that a big movement?
A. Tremendous.
Q. Those potatoes move in bags?
A. Yes, sir, they do.
Q. Have they been moving by barge?
A. Yes, sir.
Q. Well, will you tell us how they came to move by barge?
A. Well, the rails could not handle them. We were called in to pinch hit.
Q. When was that that you were called in to pinch hit?
A. Three years ago.
Q. Now, are you going to need any boats to move potatoes this year?
A. We have been so advised.
Q. Where are you going to find them?
A. We will have to scratch, that is all.

Mr. Eldred: Well, now, what is the purpose of this testimony here of this witness at this time?
Mr. Krisel: Public convenience and necessity.
Mr. Eldred: And the applicant states it can't do anything outside of the New York Harbor.
Mr. Krisel: Well, he may be able to find a boat available.
[fol. 261] Mr. Eldred: All right.

By Mr. Krisel:

Q. Now, from where to where do these cargos generally move that Mr. Harris arranges for?
A. Well, we range from points as far down as Cape Breton Island, that is above Nova Scotia, down as far as United States Gulf ports, Cuba. We get across into the islands, West Indies.
Q. Do you touch at intermediate points along the eastern seaboard?
A. Almost all of the intermediate points.
Q. Will you touch on some of them?
A. Shall I start with Canada?
Q. Start from the top down.
A. Bras d' Or Lake, in Cape Breton Island; Halifax; Nova Scotia; Bay of Fundy points; Digby, Windsor.

Exam. Konigsberg: What good will that do us? That is out of our jurisdiction.

By Mr. Krisel:

Q. Let us stick to the United States.

A. All right, start from Eastport, Maine then, down. Machias, Rockland, Searsport, Bangor, Winterport, Portland, and all the intermediate ports, such as Casteen, Belfast.

Q. Well, take some of the bigger ports on the coast.

A. Portland; Portsmouth, New Hampshire.

Q. Boston; New York?

A. Yes.

[fol. 262] Q. Philadelphia?

A. Yes.

Q. Norfolk?

A. All through. Almost everyone of them is touched in the course of our operation.

Q. And does that include ports on Long Island Sound, such as Bridgeport, New Haven, Providence?

A. Yes, Fall River, New Bedford, all of those ports.

Q. Have you arranged for any traffic on the Hudson River?

A. Very little.

Q. Now, do you know whether Mr. Harris has been having any conversations with Mr. McAllister with reference to coal movement on Long Island Sound?

A. Yes, sir, I believe he has.

Q. Do you know the nature of that conversation?

A. No, I don't.

Q. Tell us some of your experience in trying to obtain bottoms for the movement of Mr. Harris' customers' goods.

A. Well, most all of your commodities that are moving by barge today are seasonable commodities and we do our best to suggest all the barges around and meet the demand which, we anticipate, will be present.

For instance, fertilizer, of course, will move in the late winter and early spring. Your potatoes move mostly during the winter. There is practically no movement of those [fol. 263] during the summer.

Coal, we have our heaviest season in the winter months and we have to anticipate this and have the barges available for these things that we anticipate we will be moving about that time, and juggle them around to the best advantage for all concerned.

The winter—it very often happens, when the heavy movement of coal is on and we are under pressure of the office of the Interstate Commerce Commission here in New York, who control the railroad piers, from the ODT and from the War Shipping, we simply cannot get enough barges to fulfil the needs and we just have to work day and night in order to work out a situation.

Q. Would you like to get a couple of barges to run the potato trade?

A. Yes, sir, we would, right at the moment.

Q. Would you like to get some barges to run the fertilizer business?

A. Yes, sir.

Q. Like to get some in the coal business?

A. Yes, sir.

Q. Could you use any portion of McAllister's fleet if it were available to you right now?

A. We certainly could.

Q. Could you use it after the war, assuming normal traffic operations?

[fol. 264] A. If we go back to the days of, say, 1927, 1928, why we certainly would welcome any additional equipment that we could get.

Q. What, in your opinion, would be the effect if a fleet like Mr. McAllister's was not available to Mr. Harris?

Mr. Eldred: Well, now,——

Mr. Krisel: All right, I will withdraw the question. That is all.

Cross-examination.

By Mr. Gould:

Q. Mr. Smith, who has carried potatoes prior to this year from Eastport, Maine to southern ports?

A. Sheridan, Bernstien, Jacobson, Atwater.

Q. Holland, Martin, Eastern-Southern?

A. Yes.

Q. Do they publish tariffs?

A. Yes, they do.

Q. Are any of their barges available now?

A. Not for potatoes.

Q. What do they carry now?

A. Coal.

Q. What happened to the barges for coal transportation last winter?

A. We simply could not spring them loose from coal transportation under orders from ODT.

[fol. 265] Q. You had some of the canal boxes last year for coal transportation?

A. Yes, we had.

Q. Which will be released this year again?

A. Yes. Of course, they are limited in their scope. Go as far as New Haven, possibly New London in the winter.

Mr. Eldred: Just one question.

By Mr. Elred:

Q. You said, I believe, three years ago the rails were unable to handle the Maine crop?

A. That is right.

Q. Do you know whether it was a question of lack of equipment or whether it was a question of rates?

A. I don't know.

Q. Well, what makes you say that the rails could not handle the crop? On what do you base that statement?

A. That we were called into the picture by one of the larger shippers here on the east coast to relieve them. We also had a visit at Boston from a man on the advisory committee up there of the potato growers, saying that they could not move their crop.

Q. Well, did they say that they could not move it by rail or could move it by water?

A. They could not move it by rail. His name was Stone.

Q. What was the reason he gave you that they could not move it by rail, the price?

[fol. 266] A. I do not know. We were asked to come in and relieve the situation.

Q. Well, you are not testifying here today that the rails did not have physical equipment to move the crop?

A. No, I shan't go that far.

Q. No. There is considerable difference in the rates by water on potatoes in these ports than that by rail, isn't there?

A. I believe so.

Mr. Eldred: That is all.

Redirect examination.

By Mr. Krisel:

Q. Now, just one more question, Mr. Smith. The coal movement, here on Long Island Sound to New England points, got pretty acute, did it not?

A. It did, particularly last winter and the spring.

Q. You had to put deck scows to carrying coal?

A. We did.

Q. Did you ever see a deck scow carrying coal before?

A. No.

Mr. Gould: Didn't deck scows always carry coal on the Sound prior to the war period?

The Witness: To the best of my knowledge, last fall was the first time they attempted it. I know we had considerable difficulty in arranging for the coverage and we were in a little bit of doubt ourselves that they would work out, but they did.

[fol. 267] Mr. Eldred: Well, wasn't it due to the fact that the colliers were out of the trade?

The Witness: Yes.

Mr. Eldred: Normally, the colliers delivered right to the trade to points on the Sound.

Mr. Krisel: That is all.

Mr. Gould: I overlooked asking Mr. McAllister a question, please.

Mr. Krisel: I would like to recall him for a few minutes for one or two questions, anyway, if you don't mind one or two questions.

Exam. Konigsberg: All right.

James P. McAllister was recalled, and testified further as follows:

By Mr. Gould:

Q. Do McAllister Brothers or McAllister Lighterage Line issue a tariff or schedule of rates?

A. The McAllister Lighterage Line issues a schedule of towing rates confined to New York Harbor, that is all.

Q. The McAllister Lighterage Line, do they issue a tariff or schedule rates on commodities generally?

A. No.

Q. Never issued at all?

A. Not that I know.

Mr. Gould: That is all.

[fol. 268] By Mr. Krisel:

Q. I was going to object to this question about filing schedules and tariffs. I have always felt that heretofore, prior to regulation, there wasn't any need for it. Anybody can file a tariff or schedule of rates, posting rates on any waterway in the United States, and that would be no more than a serving declaration on a grandfather application. The same would be true if a man omitted to post a rate on some waterway.

Mr. Gould: I object to that.

Exam. Konigsberg: Now, Mr. Krisel, you are merely making an argument.

Mr. Krisel: Well, I will ask Mr. McAllister just one or two questions.

By Mr. Krisel:

Q. You heard Mr. Smith testify just a minute ago?

A. I did.

Q. You know Maxwell Harris?

A. I do.

Q. Did he come to see you last week?

A. He did.

Q. Tell us what you said and what he said.

A. He came in. He became aware of the fact that we had two large coastwise barges in Philadelphia, and he came to us and told us there was a very drastic need for that type vessel and would we consider putting them in [fol. 269] commission for service this winter on the Sound, east, and possibly, in the spring, come back with potatoes. I don't remember the exact season, but that is what he wanted to do, act as broker and we would operate these barges.

Q. What did you tell him?

A. We told him we expected to bring them to New York and put them into commission.

By Mr. Gould:

Q. Mr. McAllister, on this potato question again. Is that in bulk or in bags?

A. In bags, I understand it.

Q. If you issued no tariff or schedule of rates how could you carry it?

A. I understand that is one reason we are here.

Q. Weren't you advised originally to file tariffs, when you filed your original application?

A. No.

Mr. Gould: That is all.

Exam. Konigsberg: Anything, Mr. Eldred?

By Mr. Eldred:

Q. Who proposes to operate these barges in the coal trade for Harris?

A. We would be the actual operators. He would be the broker procuring.

Q. Who would tow them?

A. We may tow them, or other towers that Mr. Maxwell Harris arranges for them.

[fol. 270] Q. This is for the coal trade?

A. Coal, yes, sir.

Q. Points on the Sound?

A. East.

Mr. Krisel: Boston?

The Witness: Boston and Maine and anywheres he may want us to go.

Mr. Eldred: That is all.

Mr. Krisel: All right.

(Witness excused.)

Exam. Konigsberg: All right, now, gentlemen, do you desire to file briefs?

Mr. Krisel: I prefer, Mr. Examiner, to have a proposed report and I would appreciate being absolved, at this time, from having to file a brief. My circumstances are such, as you know, that it is rather difficult for me.

Exam. Konigsberg: All right, then the answer is you do not care to file a brief and you want a proposed report.

Mr. Krisel: Thank you very much.

Exam. Konigsberg: You are welcome.
The hearing is closed at 12:30 p. m.

(Whereupon, at 12:30 o'clock p. m. the hearing was closed.)

[fol. 271] EXHIBIT 1

Certificate of Incorporation of McAllister Lighterage Line, Inc., Pursuant to Article Two of the Stock Corporation Law.

We, the Undersigned, for the purpose of forming a corporation pursuant to article two of the Stock Corporation Law of the State of New York, do hereby certify:

First. The name of the proposed corporation shall be McAllister Lighterage Line Inc.

Second. The purposes for which it is to be formed are:

To build, equip, furnish, fit- purchase, charter, navigate and own steamers, towboats, lighters, derricks, barges, schooners and all other classes of boats, ships or vessels whatever the motive power of such vessels may be or whether such vessels have motive power or not.

To carry on in any or all of its branches the business of ship-owners, carriers by water of persons or property or either, the owning or operating of steamers, schooners, barges, derricks, lighters, scows, towboats and the like and of lighterage, towing, transportation, salving or wrecking, or any one or more thereof.

To acquire, by any lawful means, agreements or arrangements, the title to, possession, control, use, benefit or enjoyment of ships, vessels and floating property of any sort or description, derricks, lifting, wrecking and salvage appliances, wharves, bulkheads, basins and dock property of any sort, sheds, stores, and warehouses, marine railways and wet, dry and graving docks, and the same to hold, own, manage, maintain, improve, operate, use and enjoy, sell, dispose of, charter, exchange, deal, barter or trade in or with in any lawful manner or business.

[fol. 272] To carry on, in any of or all of its branches, the business of warehousing, storing and forwarding of goods, wares and merchandise destined for or unladen from steam vessels, ships, and every other kind of water craft, and

in connection therewith to own, lease, build or otherwise acquire, operate, and control, warehouse, stores, sheds, elevators, tanks, wharves, docks, piers or other structures, and to issue or receive warehouse, dock, storage or other receipts, negotiable or non-negotiable, covering all kinds of goods, wares, merchandise, and any other commercial commodity, or thing of value; to collect and receipt for dockage, wharfage and storage dues and other compensation, and to advance or collect freights, duties, insurance and liens of every kind upon goods, wares and merchandise or other property received on storage, or for the purpose of being warehoused or forwarded, or upon the pledge of storage, dock or warehouse receipts for such goods, wares, merchandise or other property, and in general to do any and all acts that may be necessary, convenient or pertinent to any one of the above mentioned objects.

To buy, lease or otherwise acquire, the good-will, franchises, rights and property of any person, firm, association or corporation, and to pay for the same in cash, property, the stock or bonds of this company, or otherwise; and to hold or in any manner dispose of, the whole or any part of the property so acquired; to conduct, carry on, operate, manage, control, improve and develop, the whole or any part of any business or property so acquired, either in the name of such other person or persons, firm, association or corporation, or in the name of this corporation, provided that such business is one that may be carried on by a corporation organized under the Act under which this company is incorporated, and is of a kind in which this corporation is permitted to engage by this certificate of incorporation; and to exercise all the powers necessary or convenient in and about the conduct and management of such business. [fol. 273] To manufacture, purchase, or otherwise acquire, own, mortgage, pledge, sell- assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with, goods, wares and merchandise and real and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation engaged in the same or similar business.

To acquire, hold, use- sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To purchase, hold, sell- assign, transfer, mortgage, poedge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership.

To issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

[fol. 274] To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other similar business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of New York upon corporations formed under the act hereinbefore referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Third. The total number of shares which may be issued by the corporation is *Two Hundred* (200) shares, all of which are to be without par value.

Such shares without par value may be issued from time to time for such consideration as from time to time, may be fixed by the Board of Directors.

Fourth. The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as from time to time, by resolution of the Board of Directors, may be transferred thereto.

[fol. 275] Fifth. The principal office of the corporation is to be located in the City of New York, County of New York and State of New York and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served upon him is No. 17 State Street, New York City.

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of its directors shall not be less than (3) three, nor more than Seven. Directors need not be stockholders.

Eighth. The names and post office addresses of the directors until the first annual meeting of the Stockholders are:

Name	Post Office Address	Shares
William H. McAllister,	17 State St., N. Y. City	5
James P. McAllister, Jr.,	17 State St., N. Y. City	5
William F. Brophy,	17 State St., N. Y. City	5

Ninth. All of the subscribers of the certificate are of full age, at least two-thirds of them are citizens of the United States, at least one of them is a resident of the State of New York and at least one of the persons named as a director is a citizen of the United States and a resident of the State of New York.

Tenth. The Secretary of State is designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be served.

[fol. 276] In Witness Whereof, we have made, signed and acknowledged this certificate, this 1st day of October A. D. 1937.

William H. McAllister, James P. McAllister, Jr., William F. Brophy.

STATE OF NEW YORK,
County of New York, ss:

On this 1st day of October, 1937 before me personally came William H. McAllister, James P. McAllister, Jr. and William F. Brophy to me known, and known to me to be the persons described in and who executed the foregoing certificate, and they severally duly acknowledged to me that they had executed the same.

Florence C. Lockwood, Notary Public, Kings County Clerk's No. 71, Register's No. 8082, N. Y. Co. Clk's. No. 190, Reg. No. 8L121. Commission expires March 30, 1938.

Endorsed: Certificate of Incorporation of McAllister Lighterage Line Inc. Pursuant to Article Two of the Stock Corporation Law. State of New York, Department of State. Filed Oct. 23, 1937. Tax $10. Filing Fee $40. Edward J. Flynn, Secretary of State. By A. D. Borden, Asst. Cashier.

[fol. 277]

EXHIBIT 2

Certificate of Incorporation of McAllister Brothers, Inc., Pursuant to Article Two of the Stock Corporation Law

We, the Undersigned, for the purpose of forming a corporation pursuant to article two of the Stock Corporation Law of the state of New York, do hereby certify:

First. The name of the proposed corporation shall be McAllister Brothers, Inc.

Second. The purposes for which it is to be formed are:

To build, equip, furnish, fit- purchase, charter, navigate and own steamers, towboats, lighters, derricks, barges, schooners and all other classes of boats, ships or vessels whatever the motive power of such vessels may be or whether such vessels have motive power or not:

To carry on in any or all of its branches the business of ship-owners, carriers by water of persons or property or either, the owning or operating of steamers, schooners, barges, derricks, lighters, scows, towboats and the like and of lighterage, towing transportation, salv-ing or wrecking, or any one or more thereof:

To acquire, by any lawful means, agreements or arrangements, the title to, possession, control, use- benefit or enjoyment of ships, vessels and floating property of any sort or description, derricks, lifting, wrecking and salvage appliances, wharves, bulkheads, basins and dock property of any sort, sheds, stores, and warehouses, marine railways and wet, dry and graving docks, and the same to hold, own, manage, maintain, improve, operate, use and enjoy, sell, dispose of, charter, exchange, deal, barter or trade in or with in any lawful manner of business:

To carry on, in any of or all of its branches, the business of warehousing, storing and forwarding of goods, wares and merchandise destined for or unladen from steam vessels, ships, and every other kind of water craft, and in connection therewith to own, lease, build or otherwise ac- [fol. 278] quire, operate, and control, warehouse, stores, sheds, elevators, tanks, wharves, docks, piers or other structures, and to issue or receive warehouse, dock, storage or other receipts, negotiable or non-negotiable, covering all kinds of goods, wares, merchandise, and any other commercial commodity, or thing of value; to collect and receipt for dockage, wharfage and storage dues and other compensation, and to advance or collect freights, duties, insurance and liens of every kind upon goods, wares and merchandise or other property received on storage, or for the purpose of being warehoused or forwarded, or upon the pledge of storage, dock or warehouse receipts for such goods, wares, merchandise or other property, and in general to do any and all acts that may be necessary, convenient or pertinent to any one of the above mentioned objects.

To buy, lease or otherwise acquire, the good-will, franchises, rights and property of any person, firm, association or corporation, and to pay for the same in cash, property, the stock or bonds of this company, or otherwise; and to hold or in any manner dispose of, the whole or any part of the property so acquired; to conduct, carry on, operate, manage, control, improve and develop, the whole or any part of any business or property so acquired, either in the

name of such other person or persons, firm, association or corporation, or in the name of this corporation, provided that such business is one that may be carried on by a corporation organized under the Act under which this company is incorporated, and to exercize all the powers necessary or convenient in and about the conduct and management of such business:

To manufacture, purchase or otherwise acquire, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with, goods, wares and merchandise and real and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any [fol. 279] part of the obligations or liabilities of any person, firm, association or corporation engaged in the same or similar business.

To acquire, hold, use- sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements, and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership.

To issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other similar business in connection with the foregoing, and to have and exercise [fol. 280] all the powers conferred by the laws of New York upon corporations formed under the act hereinbefore referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Third: The total number of shares which may be issued by the corporation is Two Hundred (200) shares, all of which are to be without par value.

Such shares without par value may be issued from time to time for such consideration as from time to time, may be fixed by the Board of Directors.

Fourth: The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as from time to time, by resolution of the Board of Directors, may be transferred thereto.

Fifth: The principal office of the corporation is to be located in the City of New York, County of New York and State of New York and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served upon him is No. 17 State Street, New York City.

Sixth: The duration of the corporation shall be perpetual.

Seventh: The number of its directors shall not be less than (3) three, nor more than Seven. Directors need not be stockholders.

Eighth: The names and post office addresses of the directors until the first annual meeting of the stockholders are:

[fol. 281] Name	Post Office Address	Shares
Stephen Meehan	17 State Street, N. Y. City	5
Dorothy M. Mullally	17 State Street, N. Y. City	5
Florence C. Lockwood	17 State Street, N. Y. City	5

Ninth: All of the subscribers of the certificate are of full age, at least two-thirds of them are citizens of the United States, at least one of them is a resident of the State of New York and at least one of the persons named as a director is a citizen of the United States and a resident of the State of New York.

Tenth. The Secretary of State is designated as the agent of the corporation upon whom process in any action or proceeding against the corporation may be served.

In Witness Whereof, we have made, signed and acknowledged this certificate, this 27th day of March A. D. 1936.

Stephen Meehan, Dorothy M. Mullally, Florence C. Lockwood.

State of New York,
County of New York, ss:

On this 27th day of March, 1936 before me personally came Stephen Meehan, Dorothy M. Mullally and Florence C. Lockwood to me known, and known to me to be the persons described in and who executed the foregoing certificate, and they severally duly acknowledged to me that they had executed the same.

Gerard M. McAllister, Notary Public. Kings Co. Clk's. No. 177, Reg. No. 7094, N. Y. Co. Clk's. No. 335, Reg. No. MC203. Commission expires March 30, 1937.

[fol. 282] [Endorsed:] Certificate of Incorporation, McAllister Brothers, Inc. State of New York, Department of State. Filed Mar. 30, 1936. Tax $10. Filing Fee $40. Edward J. Flynn, Secretary of State. By A. D. Borden, Asst. Cashier.

STATE OF NEW YORK,
Department of State, ss: 971

I Certify That I have compared the preceding copy with the original Certificate of Incorporation of McAllister Brothers Inc., filed in this Department on the 30th day of March, 1936, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this seventeenth day of January, one thousand nine hundred and forty-one.

Frank S. Sharp, Deputy Secretary of State.

[fol. 283] EXHIBIT 3

Conformed Copy

Minutes of a Special Meeting of the Board of Directors of McAllister Lighterage Line, Inc.

At a special meeting of the Board of Directors of McAllister Lighterage Line, Inc., held on the fifteenth day of November, 1937, at 4 o'clock in the afternoon at the offices of the said Company at 17 State Street, New York, New York, pursuant to a waiver of notice signed by the Directors.

There were present the following Directors, constituting full attendance of the Board: William H. McAllister, James P. McAllister, Stephen Meehan.

On a motion made and approved by all the Directors the following resolution was adopted:

"Whereas, McAllister Brothers, Inc., a New York Corporation has offered to charter to this corporation all of the vessels owned by the said McAllister Brothers, Inc., including its tugs, deck scows, equipment, etc., for a term of twenty years at a minimum annual consideration and whereas it appears that it is to the best interests of this corporation to accept said proposal. Now, therefore, the said offer to charter all of the vessels owned by McAllister Brothers, Inc., be, and it is

hereby accepted and approved, under the terms and conditions as stated therein."

There being no other business before the meeting, on motion the meeting was adjourned.

Stephen Meehan, Secretary.

Affidavit

I hereby certify and affirm that this is a true copy of the minutes of a special meeting of the Board of Directors of McAllister Lighterage Line, Inc., held on November 15, 1937.

Stephen Meehan.

Sworn to and subscribed before me, this 8th day of September, in the year 1943. Florence Lockwood, Notary Public.

[fol. 284]

Exhibit 4

Schedule of Chartered Equipment Operated by Applicant as of January 1, 1938

Name of Vessel	Type of Floating Equipment	Carrying Capacity	or Horse-power	Owned by		Chartered to on Bareboat Basis		Mkt. Value as of January 1, 1938
McAllister # 8	Gasoline Derrick lighter (nonpropelled)	300 tons	3 ton lift	McAllister Bros.		McAllister Lighterage Line, Inc.		$6,000.00
" #10	Steam Derrick Barge	400 tons		"	"	"	"	3,000.00
" #12	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	"	"	"	"	5,000.00
" #16	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	"	"	"	"	5,000.00
" #17	Steam Derrick Barge	300 tons		"	"	"	"	no value
" #20	" " "	400 tons		"	"	"	"	no value
" #22	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	"	"	"	"	8,00 000
" #23	Steam Derrick Barge	450 tons		"	"	"	"	8,000 00
" #24	Scow	250 tons		"	"	"	"	1,000 00
" #31	Steam Derrick Barge	400 tons		"	"	"	"	5,000 00
" #32	" " "	400 tons		"	"	"	"	5,000 00
" #35	Covered Barge	350 tons		"	"	"	"	2,500 00
" #43	Steam Derrick Barge	400 tons		"	"	"	"	8,000 00
" #46	" " "	400 tons		"	"	"	"	8,000 00
" #48	Steam Derrick		25 tons	"	"	"	"	15,000 00
" #52	" "		20 tons	"	"	"	"	3,000 00
" #57	Steam Derrick Barge	500 tons		"	"	"	"	8,000 00

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"	#58	Scow	500 tons	"	"	"	"	$5,000.00
"	#59	"	400 tons	"	"	"	"	8,000.00
"	#61	Covered Barge	350 tons	"	"	"	"	2,500.00
"	#63	Scow	900 tons	"	"	"	"	9,000.00
"	#64	Steam Derrick Barge	500 tons	"	"	"	"	5,000.00
"	#67	" " "	350 tons	"	"	"	"	3,000.00
"	#69	Scow	500 tons	"	"	"	"	3,500.00
"	#71	"	800 tons	"	"	"	"	8,000.00
"	#72	"	600 tons	"	"	"	"	5,000.00
"	#74	Steam Derrick Barge	500 tons	"	"	"	"	1,500.00
"	#77	Scow	600 tons	"	"	"	"	5,000.00
"	#78	"	600 tons	"	"	"	"	6,000.00
"	#79	"	600 tons	"	"	"	"	5,000.00
"	#82	"	600 tons	"	"	"	"	6,000.00
"	#83	"	600 tons	"	"	"	"	4,000.00
"	#84	"	500 tons	"	"	"	"	5,000.00
"	#89	"	600 tons	"	"	"	"	5,000.00
"	#90	"	700 tons	"	"	"	"	7,500.00
"	#91	"	500 tons	"	"	"	"	10,000.00

[fol. 286]

Exhibit 4—Continued

Schedule of Chartered Equipment Operated by Applicant as of January 1, 1938

Name of Vessel	Type of Floating Equipment	Carrying Capacity	or Horse-power	Owned by McAllister Bros.	Chartered to on Bareboat Basis McAllister Lighterage Line, Inc.	Mkt. Value as of January 1, 1938
McAllister #92	Scow	500 tons		" "	" "	$2,500 00
" #93	"	500 tons		" "	" "	10,000 00
" #95	Covered Barge	400 tons		" "	" "	2,500 00
" #97	" "	250 tons		" "	" "	2,000 00
" #98	Gasoline Derrick Barge	600 tons		" "	" "	15,000 00
" #99	Scow	500 tons		" "	" "	5,000 00
" #101	"	500 tons		" "	" "	2,500 00
" #102	"	500 tons		" "	" "	2,500 00
" #108	"	400 tons		" "	" "	3,500 00
" #110	Covered Barge	400 tons		" "	" "	2,500 00
" #112	Scow	300 tons		" "	" "	1,000 00
" #113	"	500 tons		" "	" "	5,000 00
Warrior	"	900 tons		" "	" "	8,000 00
War Chief	"	900 tons		" "	" "	5,000 00
War Horse	"	900 tons		" "	" "	7,500 00
Victory	Derrick	900 tons		" "	" "	50,000 00
McAllister Bros.	Diesel Tug		350	" "	" "	25,000 00
J. P. McAllister	Tug		600	" "	" "	10,000 00
Chas. D. McAllister	"		750	" "	" "	10,000 00
W. H. McAllister	"		600	" "	" "	10,000 00

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Bess	Tug		750	McAllister Bros.	McAllister Lighterage Line, Inc.	$20,000 00
East Chester	"		250	" "	" "	no value
Lear C.	Diesel Workboat		75	" "	" "	" "
Robert Scott	Tug		350	" "	" "	" "
Whistler	"		850	" "	" "	6,000 00
Pal	Gasoline Workboat		50	" "	" "	500 00
Capt. Bill	Coal Box	700 tons		" "	" "	2,500 00
Farmers Friend	Model Barge	600 tons		" "	" "	1,000 00
Moran #107	Scow	600 tons		Moran Transportation Co.	" "	chartered on per diem basis
Moran #115	"	600 tons		" "	" "	chartered on per diem basis
Howlett #10	Digger			Howlett & Co.	" "	chartered on per diem basis
Howlett #12	"			" "	" "	chartered on per diem basis
Logue #1	"			Logue Stevedoring Co.	" "	chartered on per diem basis

[fol. 288]

EXHIBIT 5

Schedule of Chartered Equipment Operated by Applicant as of January 1, 1940

Name of Vessel	Type of Floating Equipment	Carrying Capacity	or Horse-power	Owned by McAllister Bros	Chartered to on Bareboat Basis McAllister Lighterage Line, Inc.	Mkt. Value as of January 1, 1940
McAllister #8	Gasoline Derrick lighter (nonpropelled)	300 tons	3 ton lift			$9,000.00
" #12	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	" "	" "	7,500.00
" #16	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	" "	" "	7,500.00
" #22	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	" "	" "	8,000.00
" #24	Scow	250 tons		" "	" "	1,500.00
" #46	Steam Derrick Barge	400 tons		" "	" "	12,000.00
" #48	Steam Derrick		25 tons	" "	" "	22,500.00
" #57	Steam Derrick Barge	500 tons		" "	" "	12,000.00
" #58	Scow	500 tons		" "	" "	7,500.00
" #59	"	400 tons		" "	" "	8,000.00
" #63	"	900 tons		" "	" "	9,000.00
" #69	Scow	500 tons		" "	" "	5,250.00
" #71	"	800 tons		" "	" "	12,000.00
" #72	"	600 tons		" "	" "	7,500.00
" #77	"	600 tons		" "	" "	7,500.00
" #79	"	600 tons		" "	" "	7,500.00
" #82	"	600 tons		" "	" "	9,000.00
" #83	"	600 tons		" "	" "	6,000.00

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McAllister	#84	Scow	500 tons	McAllister Bros.	McAllister Lighterage Line, Inc.	$7,500.00
"	#89	"	600 tons	" "	" "	7,500.00
"	#90	"	700 tons	" "	" "	10,250.00
"	#91	"	500 tons	" "	" "	15,000.00
"	#93	"	500 tons	" "	" "	15,000.00
"	#98	Gasoline Derrick Barge	600 tons	" "	" "	15,000.00
"	#99	Scow	500 tons	" "	" "	7,500.00
"	#108	"	400 tons	" "	" "	5,250.00
Warrior		"	900 tons	" "	" "	12,000.00
War Chief		"	900 tons	" "	" "	7,500.00
War Horse		"	900 tons	" "	" "	11,250.00
James McAllister		Tug	1,000	" "	" "	50,000.00
John E. McAllister		Tug	700	" "	" "	30,000.00
W. H. McAllister		"	600	" "	" "	15,000.00
Isabel A. McAllister		Tug	900	" "	" "	40,000.00
McAllister Bros.		Diesel Tug	350	" "	" "	37,500.00
J. P. McAllister		Tug	750	" "	" "	10,000.00
J. J. Murray		Diesel workboat	180	Murray Transportation Co.	" "	chartered on per diem basis
Wms #52		Scow	1000 tons	Williams Line, Inc.	" "	chartered on per diem basis

[fol. 290]

EXHIBIT 5—Continued

Schedule of Chartered Equipment Operated by Applicant as of January 1, 1940

Name of Vessel	Type of Floating Equipment	Carrying Capacity or Horse-power	Owned by	Chartered to on Bareboat Basis	Mkt. Value as of January 1, 1940
Bouker #47H	Scow	500 tons	Bouker Contracting Co.	McAllister Lighterage Line, Inc.	chartered on per diem basis
Bouker #63H	"	500 tons	" "	" "	" " " "
Bouker #68H	"	500 tons	" "	" "	" " " "
Bouker #66H	"	500 tons	" "	" "	" " " "
Bouker #49H	"	500 tons	" "	" "	" " " "
WMS #48	"	1000 tons	Williams Line, Inc.	" "	" " " "
Tunnel Light	"	609 tons	O'Brien Bros. Inc.	" "	" " " "
Florence R.	"	600 tons	Jacob Rice & Sons	" "	" " " "
J. B. Egbert	"	800 tons	Petrie Transportation	" "	" " " "
Seaboard #121	"	800 tons	Seaboard Scow Corporation	" "	" " " "
Cleary #54	"	800 tons	Cleary Bros.	" "	" " " "
James S. Cleary	"	800 tons	Cleary Bros.	" "	" " " "
Battery Light	"	600 tons	O'Brien Bros. Inc.	" "	" " " "
Robert McCreery	Gas Hoister	600 tons	Zeller Marine	" "	" " " "
			Total Value		$455,500.00

[fol. 291]

EXHIBIT 6

Schedule of Chartered Equipment Operated by Applicant as of September 6, 1943

Name of Vessel	Type of Floating Equipment	Carrying Capacity	or Horse-power	Owned by	Chartered to on Bareboat Basis	Mkt. Value as of September 6, 1943
McAllister #8	Gasoline Derrick lighter (nonpropelled)	300 tons	3 ton lift	McAllister Bros.	McAllister Lighterage Line, Inc.	$12,000 00
McAllister #12	Gasoline Derrick lighter (nonpropelled)	400 tons	3 ton lift	" "	" "	10,000 00
" #16	" " "	400 tons	3 ton lift	" "	" "	10,000 00
" #46	Steam Derrick Barge	400 tons		" "	" "	8,000 00
" #48	Steam Derrick		25 tons	" "	" "	7,500 00
" #57	Steam Derrick Barge	500 tons		" "	" "	5,000 00
" #58	Scow	500 tons		" "	" "	10,000 00
" #63	"	900 tons		" "	" "	18,000 00
" #69	"	500 tons		" "	" "	7,000 00
" #71	"	800 tons		" "	" "	16,000 00
" #72	"	600 tons		" "	" "	10,000 00
" #77	"	600 tons		" "	" "	10,000 00
" #79	"	600 tons		" "	" "	10,000 00
" #82	"	600 tons		" "	" "	12,000 00
" #83	"	600 tons		" "	" "	8,000 00
" #84	"	500 tons		" "	" "	10,000 00
" #89	"	600 tons		" "	" "	10,000 00
" #90	"	700 tons		" "	" "	15,000 00
" #91	"	500 tons		" "	" "	20,000 00

[fol. 292]

EXHIBIT 6—Con'inued

Schedule of Chartered Equipment Operated by Applicant as of September 6, 1943

Name of Vessel	Type of Floating Equipment	Carrying Capacity	or Horse-power	Owned by McAllister Bros.	Chartered to on Bareboat Basis McAllister Lighterage Line, Inc.	Mkt. Value as of September 6, 1943
McAllister #93	Scow	500 tons				$20,000.00
" #99	"	500 tons		" "	" "	10,000.00
" #108	"	400 tons		" "	" "	7,000.00
" #115	"	500 tons		" "	" "	5,000.00
" #116	"	500 tons		" "	" "	5,000.00
" #117	"	500 tons		" "	" "	5,000.00
" #118	Covered Barge	600 tons		" "	" "	12,000.00
" #119	Scow	600 tons		" "	" "	12,000.00
" #120	Gasoline Derrick lighter	400 tons		" "	" "	10,000.00
" #121	Covered Barge	300 tons		" "	" "	7,500.00
Warrior	Heavy hoisting Derrick	600 tons	25 tons	" "	" "	50,000.00
War Chief	Scow	900 tons		" "	" "	16,000.00
War Horse	"	900 tons		" "	" "	17,000.00
Canadian	Gasoline Derrick lighter	500 tons		" "	" "	10,000.00
Australian	Scow	600 tons		" "	" "	10,000.00
Mineola	Gasoline Derrick lighter	500 tons		" "	" "	10,000.00
Leo	Covered Barge	300 tons		" "	" "	7,500.00
Munster	" "	300 tons		" "	" "	7,500.00

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Montelair	Covered Barge	300 tons		McAllister Bros.	McAllister Lighterage Line, Inc.	$7,500.00
Caldwell	" "	300 tons		" "	" "	7,500.00
Montezuma #3	Tank Barge	30,000 gals.		" "	" "	2,500.00
Oley	Coastwise Barge	2,800 tons		" "	" "	20,000.00
Cunro	" "	" "		" "	" "	20,000.00
James McAllister	Tug		1000	" "	" "	125,000.00
Isabel A. McAllister	"		900	" "	" "	75,000.00
J. P. McAllister	"		750	" "	" "	125,000.00
Chas. D. McAllister	"		850	" "	" "	75,000.00
G. M. McAllister	"		850	" "	" "	75,000.00
Catherine McAllister	Diesel Tug		600	" "	" "	125,000.00
John E. McAllister	Tug		700	" "	" "	65,000.00
Antrim	"		700	" "	" "	35,000.00
W. H. McAllister	"		600	" "	" "	35,000.00
McAllister Bros.	" Diesel Tug		420	" "	" "	35,000.00
Westerly	Tug		350	" "	" "	30,000.00
Pelham	"		300	" "	" "	25,000.00
M. L. Edwards	Diesel Lighter		100	" "	" "	25,000.00
Express	Tug		450	Eastern Steamship Co.		

[fol. 294]

EXHIBIT 6—Continued

Schedule of Chartered Equipment Operated by Applicant as of September 6, 1943

Name of Vessel	Type of Floating Equipment	Carrying Capacity or Horse-power	Owned by	Chartered to on Bareboat Basis	Mkt. Value as of September 6, 1943
Anaconda	Steam Lighter	500 tons	Chile Steamship Co.	McAllister Lighterage Line, Inc.	
Anthony Gull	Scow	750 tons	" "	" "	
J. B. Edgmeat	"	800 tons			
Jerry R.	"	800 tons	Petrie Scow Corp.	" " "	
E. R. Petrie	"	800 tons	" " "	" " "	
S. V. Petrie	"	800 tons	" " "	" " "	
Little Billie	"	700 tons	" " "	" " "	
Tunnel Light	"	600 tons	" " "	" " "	
L. E. Petrie	"	800 tons	O'Brien Bros. Inc.	" " "	
Mabel McGerney	"	1000 tons	Petrie Scow Corp.	" " "	
Ethel R.	"	700 tons	McGerney Bros.	" " "	
T. C. Granbob	"	700 tons	Rice & Company	" " "	
Zeller #10	"	700 tons	Trapprock Co.	" " "	
Andrew R.	"	600 tons	Zeller Marine Co.	" " "	
Montana	"	600 tons	Rice & Company	" " "	
Marie Kelly	"	700 tons	Chile Steamship Co.	" " "	
Emmett	"	700 tons	Kelly Company	" " "	
Seaboard #41	"	800 tons		" " "	
James Gaffney	"	800 tons	Seaboard Company	" " "	
Chile	"	600 tons	Gaffney Co.	" " "	
			Chile S. S. Co.	" " "	

[fol. 295]

Utah	Scow		600 tons
Ingot	"		600 tons
Metropolitan #176	"		600 tons
Kee #68	"		600 tons
James McGeeney	"		750 tons
Nell Petrie	"		800 tons
Fred Petrie	"		800 tons
Katherine W.	"		700 tons
Raritan	"		800 tons
Peggy Carney	"		700 tons
Metropolitan #116	"		600 tons
James Parly	"		600 tons
#59H	"		700 tons
Kew #60	"		650 tons
Moran #60	"		600 tons
Grace R.	"		600 tons
Road Light	"		600 tons
Hastings	"		600 tons
Himman	"		700 tons

[fol. 296]

Harris	Scow		700 tons
Zeller	"		700 tons
Buster	"		1000 tons
Port Clinton	Diesel Tug		1050
Port Henry	"	"	850
Port Vincent	"	"	1000

Chile Steamship Co.	McAllister Lighterage Line, Inc.			
" " "	"	"		
Metropolitan Co.	"	"		
McGeeney Company	"	"		
Petrie Scow Corp.	"	"		
" " "	"	"		
	"	"		
	"	"		
	"	"		
	"	"		
Booker Contracting Co.	"	"		
" "	"	"		
Moran Towing Company	"	"		
Rice & Company	"	"		
O'Brien Bros.	"	"		
	"	"		

	McAllister, Lighterage Line, Inc.			
Zeller Marine Co.	"	"	"	
Rice Towing Co.	"	"	"	

Operated for Account of War Shipping Administration under contract # WSA 4220

"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"

Total Value $1,336,500.00

[fol. 297] EXHIBIT 7

McAllister Brothers, Inc. and/or McAllister Lighterage Line, Inc.

Schedule

Vessel	Valuation	Sum Insured	Rate	Premium
1. "James McAllister"	$100,000	$100,000	15.12%	$15,120.00
2. "Isabel A. McAllister"	75,000	75,000	15.12	11,340.00
3. "G. M. McAllister"	75,000	75,000	15.12	11,340.00
4. "McAllister Brothers"	50,000	50,000	15.12	7,560.00
5. "W. H. McAllister"	40,000	40,000	15.12	6,048.00
6. "Catherine McAllister"	100,000	100,000	15.12	15,120.00
7. "John E. McAllister"	75,000	75,000	15.12	11,340.00
8. "Antrim"	25,000	25,000	15.12	3,780.00
9. "Pelham"	20,000	20,000	15.12	3,024.00
10. "Westerly"	20,000	20,000	15.12	3,024.00
	$580,000	$580,000		$87,696.00

Each Vessel to Be Considered as if Separately Insured

Navigating Limits

Warranted by the Assured confined to the use and navigation of the following waters:

1. thru 8.—U. S. coastwise and inland waters tributary thereto between Boston, Mass. and Norfolk, Va.; however voyages within these limits to be made via Cape Cod Canal, Long Island Sound, Delaware River and Bay, Chesapeake and Delaware Canal and Chesapeake Bay.

9. and 10.—Port, Bays and Harbor of the City of New York (including Jamaica Bay via Rockaway Inlet) inside a line drawn from Sandy Hook to Rockaway Point; Hudson River as far as Troy; tributary and adjacent inland waters of New Jersey; East River and Long Island Sound and tributary waters as far east as and including New Haven, Conn.

* * * *

Lay-Up Return Rates: Wood tugs ..... 102.15% Net
Steel or Iron tugs ..... 105.9 % Net
Cancellation Return Rate: ..... 113.4 % Net

* * * *

All other terms and conditions remaining unchanged.

Attached to and forming part of Policy No. T 43-195 of The Tugboat Underwriting Syndicate.

EXHIBIT 8

Cable Address
"McAlister"

Telephone
BOwling Green
9-5470

McALLISTER LIGHTERAGE LINE, Inc.

17 STATE STREET

NEW YORK

DERRICK BARGES
COVERED BARGES
SCOWS
TUGS
HEAVY LIFTING
DERRICKS
VESSEL PROPERTY
FOR SALE OR
CHARTER
TOWING ANYWHERE

EXHIBIT 9

TELEPHONE
BOwling Green 9-5470

TUGS
DERRICKS
OPEN BARGES
COVERED LIGHTERS
STEAM LIGHTERS

New York, ...

.....

The McALLISTER LIGHTERAGE LINE, Inc.

Towing, Transportation and General Lighterage

Hudson River, Harbor, Sound and Coastwise Towing

17 STATE STREET *No.* .....

When the captain of any tug furnished to or engaged in the service of assisting a vessel which is making use of her own propelling power goes on board said vessel, or any other licensed pilot goes on board said vessel, it is understood and agreed that said tugboat captain or licensed pilot becomes the servant of the owners of the vessel assisted in respect to the giving of orders to any of the tugs furnished to or engaged in the assisting service and in respect to the handling of such vessel, and neither those furnishing the tugs and/or pilot nor the tugs, their owners, agents, or charterers shall be liable for any damage resulting therefrom.

Exhibit 10 4-4-10

WRECKING EQUIPMENT LIFTING CAPACITY 75 TONS

McALLISTER LIGHTERAGE LINE

TUGS, STEAM LIGHTERS & DERRICKS FOR HEAVY LIFTS

17 STATE STREET NEW YORK

NOTE NEW ADDRESS

TELEPHONE: BOWLING GREEN 5470 TO 5475
NIGHT CALLS, WINDSOR 5132-BUCKMINSTER 5378

300

HEAVY LOADS...

COMPRISING the extensive McALLISTER Fleet are harbor and coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows especially adapted for handling and transporting heavy, valuable commodities.

These vessels are at the disposal of operators and shippers for essential wartime transportation.

McALLISTER TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

HTWO 90595—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

OPEN HATCHES

WITH their customary speed and efficiency McALLISTER tugs and lighters are continually transporting valuable cargoes alongside ocean going

HTWO 92592—6 pfs. to La Porte & Austin—1-23-43—x1—ORIG

McA

HIGH ON THE HALYARD OF TOWING ACHIEVEMENTS!

A number of McALLISTER vessels are now devoted to towing and transportation in active wartime service. Nevertheless we do provide prompt and efficient service for shippers and ship operators with our harbor and coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows for any assignment essential to the war effort.

McALLISTER TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

★N★

HTWO 74009—6 pfs. La Porte & Austin 2-10-'43—x1—Original

McALLISTER

FOR TOWING JOBS

THE familiar red stack with two white bands on

HTWO 90597—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

ECONOMICAL FUEL TRANSPORTATION

by Water

INCREASED demands for wartime fuel transportation have multiplied the mileages of McALLISTER lighters, tugs and self propelled tankers. McALLISTER vessels in these categories are available as a most economical means of handling bulk oil shipments in the all-out war effort.

McALLISTER TOWING LIGHTERAGE

McALLISTER LIGHTERAGE LINE, Inc.

HTWO 90596—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

RIGHT-ON THE NOSE

QUICK, efficient docking and undocking of ocean going ships is a service developed by McALLISTER tug captains and crews

These vessels are at the disposal of operators and shippers for essential wartime transportation.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

HTWO 90595—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise

OPEN HATCHES

WITH their customary speed and efficiency, McALLISTER tugs and lighters are continually transporting valuable cargoes alongside ocean going ships. Arrangements for such dependable day and night service in the interests of the war effort, can be made through this office.

McALLISTER
TOWING LIGHTERAG
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

PROOFS FROM
New York Herald Tribune

coastal tugs, derricks, self-propelled lighters, lighters, covered barges and scows for any assignment essential to the war effort.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

★N★
HTWO 74009—6 pfs. La Porte & Austin 2-10-'43—x1—Original

McALLISTER

FOR TOWING JOBS

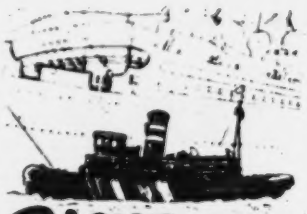
THE familiar red stack with two white bands on every McALLISTER tug has for three-quarters of a century constituted a symbol for tough towing jobs well done. This is why McALLISTER repeatedly gets assignments where the work and responsibilities are heavy and where time is at a premium.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

pelled tankers. McALLISTER vessels in these categories are available as a most economical means of handling bulk oil shipments in the all-out war effort.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

HTWO 90596—6 pfs. to La Porte & Austin 2-17-'43—x1—1st Revise



RIGHT-ON THE NOSE

QUICK, efficient docking and undocking of ocean going ships as a service developed by McALLISTER tug captains and crews through years of peacetime experience. This service is now at the disposal of war-rushed operators in the interests of substantial time savings.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE, Inc.
17 State Street • New York City

The Fleet's OUT!

McALLISTER harbor and coastal tugs, derricks, self-propelled lighters, lighters and scows are working day and night, as in World War I. These dependable vessels and their experienced crews are at the service of firms requiring war essential marine towing and transportation.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE

MILLIONS IN METALS

The McAllister Lighterage Line, Inc., have long been noted for their expert [illegible] handling of heavy valuable cargoes in metal. Though demands have multiplied, especially adapted McAllister tugs, lighters and scows, are available for essential transporting assignments.

McALLISTER
TOWING LIGHTERAGE
McALLISTER LIGHTERAGE LINE

DISPATCHERS On Duty!

DIRECTING the multiplied assignments of McALLISTER harbor and coastal tugs, derricks, self-propelled lighters, lighters and scows, is a top-flight dispatching staff. Day and night radiophone dispatching controls these vessels with railroad-like accuracy. This time saving, work speeding service may be utilized by businesses requiring "essential" towing and transportation.

McALLISTER
TOWING LIGHTERAGE
[illegible] LIGHTERAGE LINE

[fol. 303]

EXHIBIT 12

Freighting Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper—Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				(January 1, 1931 to December 31, 1931)					
#Derrick #91	Boilers	New Rochelle, N. Y.	David's Isld., N. Y.	Callahan Eng. Co., So. Bethlehem, N. Y.	7/ 9/31	1	Oral	10	Trip
#J. W. Johnson	Oil in cans and case	Phila., Pa.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	7/11/31	1	"	156	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	"	7/31/31	1	"	61	"
#Victory	Machinery	Grenville, N. J.	Roslyn, N. Y.	Andrews Road & Supply, Roslyn, N. Y.	8/ 5/31	1	"		"
*J. A. Murray) #J. W. Johnson)	Paper in bales	NewYork, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	8/ 7/31	1	"	61	"
#J. W. Johnson	Oils in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	8/12/31	1	"	31	"
*J. A. Murray	Sugar bags in bales	Phila., Pa.	L. I. City, N. Y.	Amer. Shipping Co., Baltimore, Md.	8/12/31	1	"	122	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	8/12/31	1	"	30	"
#J. W. Johnson	"	Phila., Pa.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	8/19/31	1	"	64	"
#J. W. Johnson	Paper bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	8/21/31	1	"	39	"
#J. W. Johnson	Sugar bags in bales	Phila., Pa.	New York, N. Y.	Amer. Sugar, Baltimore, Md.	8/24/31	1	"	70	"
*J. A. Murray	Paper bales	New York, N. Y.	Delair, N. J.	Kieckheffer, Container Co., Delair, N. J.	8/28/31	1	"	134	"
#J. W. Johnson	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	8/31/31	1	"	63	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/ 2/31	1	"	69	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/ 9/31	1	"	53	"
#J. W. Johnson	Oils in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	9/16/31	1	"	42	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	9/17/31	1	"	24	"
[fol. 304]									
#Bge. #98) #Albany)	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/19/31	1	"	90	"
#Albany	Oil in cans and cases	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	9/25/31	1	"	122	"
*Loveland #4	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	9/25/31	1	"	155	"
*Loveland #4) #J. W. Johnson)	"	Bayonne, N. J.	Paulsboro, N. J.	Vacuum Oil Co., New York, N. Y.	9/26/31	1	"	52	"
#Albany	"	Pt. Breeze, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	9/26/31	1	"	4	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/29/31	1	"	34	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	10/ 5/31	1	"	2	"
#J. W. Johnson	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/ 6/31	1	"	36	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 7/31	1	"	57	"
#Albany	"	New York, N. Y.	Delair, N. J.	"	10/ 7/31	1	"	68	"
#Albany	Hessian cloth—rags in bales	New York, N. Y.	Phila., Pa.	Chase Bag Co., New York, N. Y.	10/ 8/31	1	"	24	"
#McAllister 98) *J. A. Murray) #J. W. Johnson)	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 9/31	1	"	39	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	10/ 9/31	1	"	92	"
#J. W. Johnson	"	Constable Hook, N. J.	Paulsboro, N. J.	"	10/14/31	1	"	59	"
#Albany	Rags (bales)	Phila., Pa.	New York, N. Y.	Amer. Sugar Refining Co., Baltimore, Md.	10/15/31	1	"	56	"
[fol. 305]									
#McAllister 98) #Albany)	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/20/31	1	"	65	"

	bales							
*J. A. Murray	Paper bales	New York, N. Y.	Delair, N. J.	Kieckheffer, Container Co., Delair, N. J.	8/28/31	1	"	134	"
#J. W. Johnson	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	8/31/31	1	"	63	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/ 2/31	1	"	69	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/ 9/31	1	"	53	"
#J. W. Johnson	Oils in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	9/16/31	1	"	42	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	9/17/31	1	"	24	"
[fol. 304]									
#Bge. #98)	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	9/19/31	1	"	90	"
#Albany)									
#Albany	Oil in cans and cases	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	9/25/31	1	"	122	"
*Loveland #4	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atl. Refining Co., Phila., Pa.	9/25/31	1	"	155	"
*Loveland #4)	"	Bayonne, N. J.	Paulsboro, N. J.	Vacuum Oil Co., New York, N. Y.	9/26/31	1	"	52	"
#J. W. Johnson)									
#Albany	"	Pt. Breeze, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	9/26/31	1	"	4	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	9/29/31	1	"	34	"
#J. W. Johnson	"	Paulsboro, N. J.	New York, N. Y.	Standard Oil Co., New York, N. Y.	10/ 5/31	1	"	2	"
#J. W. Johnson	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/ 6/31	1	"	36	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 7/31	1	"	57	"
#Albany	"	New York, N. Y.	Delair, N. J.	"	10/ 7/31	1	"	68	"
#Albany	Hessian cloth—rags in bales	New York, N. Y.	Phila., Pa.	Chase Bag Co., New York, N. Y.	10/ 8/31	1	"	24	"
#McAllister 98)									
*J. A. Murray)	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/ 9/31	1	"	39	"
#J. W. Johnson)									
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	10/ 9/31	1	"	92	"
#J. W. Johnson	"	Constable Hook, N. J.	Paulsboro, N. J.	"	10/14/31	1	"	59	"
#Albany	Rags (bales)	Phila., Pa.	New York, N. Y.	Amer. Sugar Refining Co., Baltimore, Md.	10/15/31	1	"	56	"
[fol. 305]									
#McAllister 98)	Paper	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/20/31	1	"	65	"
#Albany)									
#Albany	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/20/31	1	"	17	"
#Albany	"	Paulsboro, N. J.	Jersey City, N. J.	Vacuum Oil Co., New York, N. Y.	10/20/31	1	"	42	"
*J. A. Murray	"	Paulsboro, N. J.	Hoboken, N. J.	"	10/21/31	1	"	112	"
#Albany	1 clam shell bucket	Pr. 6, Hoboken, N. J.	Phila., Pa.	M. P. Howlett, New York, N. Y.	10/21/31	1	"		"
#Albany	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	10/27/31	1	"	84	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	10/28/31	1	"	52	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., New York, N. Y.	11/ 2/31	1	"	62	"
*D. L. & W. #20	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/ 4/31	1	"	83	"
*D. L. & W. #20	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	11/ 5/31	1	"	155	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/10/31	1	"	41	"
#Albany	Bales of rags	Phila., Pa.	New York, N. Y.	Amer. Sugar Co., Baltimore, Md.	11/11/31	1	"	130	"
#Albany	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/17/31	1	"	44	"
*G. B. #20	Lumber	Phila., Pa.	Hoboken, N. J.	?	11/18/31	1	"		"
#Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	11/19/31	1	"	35	"
#J. W. Johnson	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	11/19/31	1	"	70	"
#Albany	"	Pt. Breeze, N. J.	New York, N. Y.	"	11/24/31	1	"	30	"
[fol. 306]									
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/24/31	1	"	50	"
#J. W. Johnson)	Oil in cans	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., New York, N. Y.	11/25/31	1	"	77	"
*Loveland #4)	and cases								
#Albany	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	11/28/31	1	"	45	"
#J. W. Johnson	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	11/30/31	1	"	45	"
#Albany	"	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., New York, N. Y.	12/ 2/31	1	"	47	"
#J. W. Johnson	Paper in bales	New York, N. Y.	Delair, N. J.	Kieckheffer Container Co., Delair, N. J.	12/ 2/31	1	"	57	"
#J. W. Johnson	Oil in cans	Paulsboro, N. J.	Pier 33, Bklyn, N.Y.	Vacuum Oil Co., New York, N. Y.	12/ 8/31	1	"	59	"
#Albany	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	12/17/31	1	"	171	"

#Vessels owned by McAllister Bros. and bare boat chartered to applicant.

*Other vessels under charter to applicant.

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EXHIBIT

Freighting Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper—Address	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				(January 1, 1932 to December 31, 1932)					
#Albany	Kerosene in cases	Constable Hook, N. J.	Staten Island, N. Y.						
#Albany	"	Staten Island, N. Y.	New Brunswick, N. J.						
#Albany	"	New Brunswick, N. J.	Bound Book, N. J.						
#Albany	"	Bound Brook, N. J.	Princeton, N. J.						
#Albany	"	Princeton, N. J.	Trenton, N. J.		4/ 9/32			4300 gals.	4/9–4/16
#Albany	"	Trenton, N. J.	South Phila., Pa.						
#Albany	"	South Phila., Pa.	Bordentown, N. J.						
#Albany	"	Bordentown, N. J.	Trenton, N. J.						
#Albany	"	Trenton, N. J.	JerseyCity, N. J.						
#Albany	Assorted Freight —coffee, pepper in bags	South Phila., Pa.	Jersey City, N. J.	Moore & McCormack, N.Y.C.	4/16/32	1	Oral	102	Trip
#J. W. Johnson	Oil in cans and cases	Pt. Breeze, N. J.	Brooklyn, N. Y.	Vacuum Oil Co. N.Y.C.	4/25/32	1	"	45	"
#J. W. Johnson #Albany	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	Atlantic Refining Co., Phila., Pa.	4/25/32	1	"	68	"
#J. W. Johnson	"	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	5/ 2/32	1	"	48	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/ 9/32	1	"	18	"
#Albany	"	Paulsboro, N. J.	New York, N. Y.	"	5/16/32	1	"	40	"
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#Albany	"	Phila., Pa.	Brooklyn, N. Y.	"	5/17/32	1	"	42	"
#J. W. Johnson	"	Paulsboro, N. J.	Brooklyn, N. Y.	"	5/18/32	1	"	89	"
#J. W. Johnson	Prassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	5/21/32	1	"	18	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	New York, N. Y.	Vacuum Oil Co., NY.C.	5/27/32	1	"	93	"
*Loveland #4 #Albany	?	Phila., Pa.	Brooklyn, N. Y.		5/ 3/32	1	"	304	"
#Victory (Derrick)	Constr. Fill			U. S. Engineers Office, N.Y.C.	5/31/32	1	Written or bid		"
*D. B. #20			Brooklyn, N. Y.		6/ 1/32	1	Oral	285	"
#Albany			Brooklyn, N. Y.		6/21/32	1	"	207	"
#J. W. Johnson	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Phila., Pa.	Barber Steamhip Line, N.Y.C.	6/ 6/32	1	"	25	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	6/ 7/32	1	"	54	
#Albany			Brooklyn, N. Y.		6/ 8/32	1	"	68	"
#Albany	Palm oil in cans & cases	Brooklyn, N. Y.	Phila., Pa.	Daniel Bacon, N.Y.C.	6/13/32	1	"	20	"
#Albany	Prassava	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	6/13/32	1	"	18	"
#J. W. Johnson	Oil in cans and cases	Paulsboro, N. J.	New York, N.Y.	Vacuum Oil Co., N.Y.C.	6/ 6/32	1	"	35	"
#Albany	Paraffin wax in bags and cakes	Pt. Breeze, N. J.	New York, N. Y.	Chatham Petroleum Co., N.Y.C.	6/30/32	1	"	11	"
#Albany			New York, N. Y.		7/ 1/32	1	"	134	"
#Albany	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Baltimore, Md.	Barber Steamship Line, N.Y.C.	7/ 7/32	1	"	97	"
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#Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	7/28/32	1	"	16	"
#Albany			Brooklyn, N. Y.		7/28/32	1	"	39	"
#Albany	"	Weehawken, N. J.	Phila., Pa.	A. V. Berner & Co.	8/ 1/32	1	"	6	"
#Albany	Germ. Copal	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/ 1/32	1	"	18	"
#Albany	Assorted Freight —coffee, pepper in bags	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/ 1/32	1	"	27	"

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# Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	7/28/32	1	"	16	"
# Albany	"	"	Brooklyn, N. Y.	"	7/28/32	1	"	39	"
# Albany	"	Weehawken, N. J.	Phila., Pa.	A. V. Berner & Co.	8/ 1/32	1	"	6	"
# Albany	Germ. Copal	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/ 1/32	1	"	18	"
# Albany	Assorted Freight —coffee, pepper in bags	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/ 1/32	1	"	27	"
# Albany	"	"	Brooklyn, N. Y.	"	8/ 8/32	1	"	21	"
# Albany	Paraffin wax in bags and cakes	Pt. Breeze, N. J.	Brooklyn, N. Y.	Chatham Petroleum Co., N.Y.C.	8/ 8/32	1	"	28	"
# Albany	Oil in cans and cases	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	8/ 8/32	1	"	146	"
# Albany	Goat and sheep skins in bales	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/11/32	1	"	28	"
# Albany	"	New York, N. Y.	Pt. Breeze, N. J.	"	8/11/32	1	"	51	"
# Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	8/18/32	1	"	59	"
# Albany	"	Pt. Breeze, N. J.	Brooklyn, N. Y.	"	8/18/32	1	"	51	"
# Albany	Goat skins in bales	Hoboken, N. J.	Phila., Pa.	Booth Amer. Shipping Co., N.Y.C.	8/22/32	1	"	3	"
# Albany	Assorted Freight —coffee, pepper in bags	New York, N. Y.	Phila., Pa.	Kokersia Line, N.Y.C.	8/22/32	1	"	22	"

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# Albany	Rapeseed oil in cans	Brooklyn, N. Y.	Phila., Pa.	W. J. Roundtree Co., N.Y.C.	8/22/32	1	"	28	"
# Albany	"	"	"	"	8/23/32	1	"	116	"
# Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	8/28/32	1	"	34	"
# Albany	Palm oil in cases and cakes	Brooklyn, N. Y.	Phila., Pa.	Daniel Bacon, N.Y.C.	8/31/32	1	"	19	"
# Albany	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	8/31/32	1	"	11	"
# Albany	"	Brooklyn, N. Y.	"	"	9/ 7/32	1	"	46	"
# Albany	Oil in cans and cases	Paulsboro, N. J.	Brooklyn, N. Y.	Vacuum Oil Co., N.Y.C.	9/ 7/32	1	"	41	"
# Albany	Paraffin wax in bags	Pt. Breeze, N. J.	Brooklyn, N. Y.	Chatham Petroleum Co., N.Y.C.	9/ 7/32	1	"	28	"
# Albany	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	9/10/32	1	"	77	"
Unknown	Pyrethuem flowers in barrels	New York, N. Y.	Baltimore, Md.	"	?	1	"	48	"
# Albany	"	"	Brooklyn, N. Y.	"	9/15/32	1	"	110	"
# Albany	Assorted Freight —pepper	New York, N. Y.	Phila., Pa.	"	9/20/32	1	"	124	"
# Albany	Goat skins & pepper in bales	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	10/ 8/32	1	"	64	"

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# Albany	Oil in cans and cases	Paulsboro, N. J.	Hoboken, N. J.	Vacuum Oil Co., N.Y.C.	10/15/32	1	"	120	"
# Albany	Porcelain in crates	Brooklyn, N. Y.	Phila., Pa.	W. J. Roundtree Co., N.Y.C.	10/22/32	1	"	13	"
# Albany	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	10/ 8/32	1	"	80	"
# Albany	"	"	Brooklyn, N. Y.	"	11/ 2/32	1	"	245	"
# Albany	"	Staten Isld., N. Y.	Phila., Pa.	Boyd Wier & Sewell, N.Y.C.	11/ 7/32	1	"	79	"
# Albany	"	Brooklyn, N. Y.	Phila., Pa.	Barber Steamship Line, N.Y.C.	11/ 7/32	1	"	8	"
# Albany	Porcelain in crates	Brooklyn, N. Y.	Baltimore, Md.	"	11/14/32	1	"	5	"
# Albany	Assorted Freight —coffee, pepper in bags	Brooklyn, N. Y.	Baltimore, Md.	Kokersia Line, N.Y.C.	11/14/32	1	"	41	"
# Albany	"	"	Brooklyn, N. Y.	"	11/28/32	1	"	183	"

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EXHIBIT

Freighting Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				(January 1, 1937 to December 31, 1937)					
*Victory	Machinery	Albany, N. Y.	New York	Callahan Road Improve. Co., Albany, N. Y.	7/17/37	1	Oral	250	7/17-7/25
*Victory	"	Albany, N. Y.	Kingston, N. Y.	"	7/20/37	1	"	250	"
*Victory	"	Kingston, N. Y.	Rondout Creek, N. Y.	"	7/21/37	1	"	250	"
*Victory	Airplanes	No. Beach, N. Y.	Pt. Washington, N. Y.	Colombia (Consul General), N.Y.C.	10/ 5/37	1	"		Trip
*Victory	Guns & parts	Fisher's Isld., N. Y.	New London, Conn.	U. S. Army, N. Y.	5/ 9/37	1	"		"
*Victory	"	New London, Conn.	Fisher's Isld., N. Y.	"	5/10/37	1	"		"
*Victory	"	New London, Conn.	Enroute	"	5/11/37	1	"		"
*Victory	"	Fisher's Isld., N. Y.	New London, Conn.	"	5/11/37	1	"		"
*Victory	"	New London, Conn.	Ft. Wright, N. Y.	War Dept., Q. M. Office	5/11/37	1	"		"

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Freighting Operations

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McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trip	Contract Written or Oral	Cargo Tonnage	Duration
				(January 1, 1940 to December 31, 1940)					
*J. B. Egbert *William #51 *Cleary #74 *Creek *Zeller #14	M Kanna Copper Katanga Cu Matte Cu ore samples	S.S. Brynje, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	3/18/40	1	Oral	2672	3/5-3/14 3/6-3/13 3/6-3/15 3/8-3/18 3/11-3/16
#79	Blister copper	S.S. Atlantic, N. Y.	Carteret, N. J.	"	4/10/40			515	4/1-4/6
#72								499	4/1-4/6
*Pilot Light *L. E. Petrie								648 770	Trip "
*Bright Light *Margorie R *Cleary #70 *Cleary #54 *Sophia R *E. R. Petrie	Copper Matte	S.S. Silver, Brooklyn, N. Y.	Carteret, N. J.	Wm. Roundtree, Co., Inc., N.Y.C.	4/30/40			739 720 809 615 656 572	" " " " " "
#72 *Catherine W *Roslyn	Copper Matte	S.S. West Isleta, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	4/30/40			504 511 662	" " "
#71 *Zeller 16 *Tunnel Lite	Copper Matte	S.S. West Cawthorne,	Carteret, N. J.	"	6/21/40			1597	6/10-6/21 6/10-6/20 6/10-6/20

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* Other vessels under charter to applicant.

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EXHIBIT

Freighting Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trip	Contract Written or Oral	Cargo Tonnage	Duration
				(January 1, 1941 to December 31, 1941)					
*S. V. Petrie *Murray Bay *L. E. Petrie *J. V. Petrie	Copper Matte	S.S. Pacific, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	1/10/41	1	Oral	2236	Trip
*Murray Hill *E. R. Petrie *Buster	"	S.S. City of New York	Carteret, N. J.	"	1/22/41	1	"	1674	"
*Murray Ocean *Murray Sea *Murray Cove *Murray Stream *Jerry R	"	S.S. Minnesotan, N. Y.	Carteret, N. J.	"	2/ 4/41	1	"	3084	"
*E. J. Morrison *G. J. McIndoe *P. Smith	"	S.S. Coloradon, Brooklyn, N. Y.	Carteret, N J	"	3/26/41	1	"	2527	"
*Cleary #64 *Catherine W									4/11–4/19
*Moran #107 *#104 H	"	S.S. Chas.H. Cramp	Carteret, N. J.	"	4/19/41	1	"	2077	4/11–4/16 4/11–4/17
*Point Light *Busher *Nell Petrie	"	S.S.City of New York, Brooklyn, N. Y.	Carteret, N. J.	"	4/13/41	1	"	404 760 766	Trip " "
#Barge #82 *Nan Jewett	Explosives	Metuchen, N. J.	25 miles at sea	War Department	8/ 8/41	1	Written	200	"
*Nell Petrie *Annie Horan	Copper Matte	S.S. Minnesotan, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	9/12/41	1	Oral	1866	"
*S. V. Petrie	Lead	S.S. Santa Cruz, N. Y.	Brooklyn, N. Y.	Amer. Metals Co., N.Y.C.	9/12/41	1	"	299	9/8–9/12

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*Nan Jewett								833	
*Nell Petrie	Copper Matte	S.S. Minnesotan	Carteret, N. J.	"	9/12/41	1	"	607	
*Annie Horan								426	
*Waldie Jr.	Copper Matte	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	9/13/41		"	573	
*Roslyn								530	
*Catherine Hickey								500	9/9–9/15
#77 *Bermuda	Lead	S.S. Ozark, Brooklyn, N. Y.	Carteret, N. J.	"	9/15/41		"	325 250	9/16–9/15
*Thomas R	"	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/15/41		"	504	9/6–9/15
*Dells #14	"	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/18/41		"	495	Trip
*J. C. Cleary									9/16–9/18
*S. V. Petrie	"	S.S. Santa Cruz	Brooklyn, N. Y.	"	9/18/41		"	1129	9/6–9/12
*Fred Petrie	"	S.S. West——,	Carteret, N. J.	"	9/21/41		"	986	
*Busher	Copper Matte	Brooklyn, N. Y.						748	Trip
*G. Cleary *H. Foss	"	S.S. Oklahoman,	Carteret, N. J.	"	9/26/41		"		
*Tunnel Lite		N. Y.						235	
*G. Cleary *H. Foss	"	S.S. Oklahoman, Pr. 37	Carteret, N. J.	"	9/26/41		"	728	"
*Tunnel Lite								488	
*Zeller #14	Copper, copper powder & lead	Carteret, N. J.	New York, N. Y.	"	9/30/41		"	4629	"
*Cathode	Lead	S.S. Medina, N. Y.	Brooklyn, N. Y.	"	9/30/41		"	200	"

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								289	9/8-9/12
*Nan Jewett								833	
*Nell Petrie	Copper Matte	S.S. Minnesotan	Carteret, N. J.	"	9/12/41	1	"	607	
*Annie Horan								426	
*Waldie Jr.	Copper Matte	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	9/13/41		"	573	
*Roslyn								530	
*Catherine Hickey								500	9/9-9/15
#77	Lead	S.S. Ozark, Brooklyn, N. Y.	Carteret, N. J.	"	9/15/41		"	325	
*Bermuda								250	9/16-9/15
*Thomas R	"	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/15/41		"	504	9/6-9/15
*Dells #14	"	S.S. Santa Cruz	Perth Amboy, N. J.	"	9/18/41		"	495	Trip
*J. C. Cleary									9/16-9/18
*S. V. Petrie	"	S.S. Santa Cruz	Brooklyn, N. Y.	"	9/18/41		"	1129	9/6-9/12
*Fred Petrie	"	S.S. West——,	Carteret, N. J.	"	9/21/41		"	986	
*Busher	CopperMatte	Brooklyn, N. Y.						748	Trip
*G. Cleary									
*H. Foss	"	S.S. Oklahoman, N. Y.	Carteret, N. J.	"	9/26/41		"		
*Tunnel Lite								235	
*G. Cleary	"	S.S. Oklahoman, Pr. 37	Carteret, N. J.	"	9/26/41		"	728	"
*H. Foss									
*Tunnel Lite								488	
*Zeller #14	Copper, copper powder & lead	Carteret, N. J.	New York, N. Y.	"	9/30/41		"	4629	"
*Cathode	Lead	S.S. Medina, N. Y.	Brooklyn, N. Y.	"	9/30/41		"	200	"
[fol. 316]									
*Zeller #14	Slavage Mexican Lead	S.S. Panuto	Carteret, N. J.	"	10/ 4/41		Oral	203	"
*L. E. Petrie	Bars Lead	S.S. Agwistar	Brkyn. N. Y.	"	10/16/41		"	400	10/8-10/16
*Fred Petrie	Bars Lead	S.S. Santa Cruz	Perth Amboy, N. J.	"	10/17/41		"	205	10-13-10/17
*Zeller#14									
*J. V. Petrie	Copper Matte	S.S. Columbia, Brooklyn, N. Y.	Carteret, N. J.	"	10/11/41		"	2005	Trip
*Patricia R									
*J. V. Petrie	Bars Lead	S.S. Santa Cruz, N. Y.	Brooklyn, N. Y.	"	10/20/41		"	450	10/13-10/20
*Patricia R	Misc.Equip.	Carteret, N. J.	S.S. W. Modus, N. Y.	"	10/20/41		"	340	10/14-10/20
*E. R. Petrie	Bars Copper	Carteret, N. J.	Hastings, N. Y.	"	10/29/41		"	443	10/24-10/29
#Warrior	Misc. Equip.	Carteret, N. J.	S.S. Pacific, Oke, N. Y.	"	11/ 6/41		"	71	11/2-11/6
*Nan Foss									
*Harry G. Lee	Copper Matte	S.S. Wild Wood, Brooklyn, N. Y.		"	11/10/41		"	1636	Trip
#McAllister #82									
#79	Misc. Equip.	Carteret, N. J.	S.S. Santa Monica, N. Y.	"	11/22/41		"	134	11/14-11/22
*Moran #58	Bars Cero Lead	S.S. Santa Cruz	Brooklyn, N. Y.	"	11/24/41		"	728	11/16-11/19
*Moran #109									11/16-11/24
*Murray Valley	1981 Bars Cero Lead	S.S. Santa Cruz, N. Y.	Perth Amboy, N. J.	"	11/25/41		"	100	11/16-11/25
*Daniel R	5994 Bars Lead	S.S. Santa Anna, N. Y.	Brooklyn, N. Y.	"		1	"	300	12/10-12/12
[fol. 317]									
*Daniel R	Bars of Lead	S.S. Santa Anna, N. Y.	Perth Amboy, N. J.	"		1	"	100	12/10-12/15
*Zeller #14									
*Zeller #18	Copper Matte	S.S. Henry Grove, N. Y.	Carteret, N. J.	"	12/11/41	1	"	3306	Trip
*Zeller #10									
*Peggy Carney									
*H. B. Paterson	Groya	S.S. Santa Aria	New York, N. Y.	"	12/16/41	1	"	885	"
*Elsie R	Copper								
*Peggy Carney	Burlap Bags, Machinery	Carteret, N. J.	S.S. Seminole, N. Y.	"	12/29/41	1	"	160	12/1-12/2
	Copper, Lead	Carteret, N. J.	N. Y. Harbor	"	12/31/41	1	"	3985	12/1-12/31
	Lead		Perth Amboy, N. J.		12/31/41				12/1-12/31
	Bars Cero Lead	S.S. Santa Cruz, N. Y.	Brooklyn, N. Y.	"	12/31/41		"	630	12/1-

Vessels owned by McAllister Bros. and bare boat chartered to applicant.
* Other vessels under charter to applicant.

[fol. 318]

EXHIBIT

Freighting Operations

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
			(January 1, 1942 to December 31, 1942)						
Unknown	Explosives	Brooklyn, N. Y.	25 miles at sea	Netherlands Purch. Comm., N. Y.	3/31/42	1	Oral		
*Murray Bay	1036 drums toluol	Pr. 12, CRR, N. J.	S.S. Algic, Erie Basin	Moore & McCormack, N.Y.C.	4/ 1/42	1		225	
#Barge #63	615 drums toluol	Pr. 14, CRR, N. J.	S.S. Mary, Brooklyn	"	4/ 1/42	1		134	3/29-4/1
*Will Petrie	1476 drums toluol	Delaware, L. & W.	S.S. Antonius	"	5/ 5/42			452	
*J. V. Petrie	603 drums toluol	Erie R/R	Erie Basin	"	5/ 5/42				
*Utah	Ammunition	So. Amboy, N. J.	S.S. Cold Harbor	"	5/19/42	1			5/18-5/19
#Barge #77	Small Arms	So. Amboy, N. J.	S.S. Scottsburg	"	5/20/42	1			5/19-5/20
Unknown	394 drums toluol	CRR of N. J. Dock	S.S. Esek Hopkins	"	6/ 8/42			87	6/4-6/8
*Cabin Lite	322 drums toluol	Erie Dock	S.S. John Walker	"	8/25/42	1		65	
#Andy Horan	950 drums toluol	Pr. 12, CRR of N. J.	S.S. Alma Mata, Jersey City	"	9/ 3/42	1		207	
*Agnes R									9/1-9/9
*Port Light									9/1-9/8
*Alice R	Bulk ore	S.S. Besholt, Brooklyn, N. Y.	C.R.R. of N. J.	Barber Steamship Line	9/10/42			2346	9/2-9/8
*Laura R									9/2-9/9
*Port Light									9/9-9/10
[fol. 319]			January 1, 1940 to December 31, 1940						
*Murray River									Trip
*William R									"
*Elizabeth R	Copper Matte	S.S. Pacific, N. Y.	Carteret, N. J.	American So. African Line, N.Y.C.	8/31/40			2921	"
*The Beauth									"
*Port Light									"
*Port Light									"
*Sophia R	Blister Copper	New York, N. Y.	Carteret, N. J.	"	9/16/40	1	Oral	564	9/5-9/16
*Elsie R	Copper Matte	S.S. Sagadohoc, N. Y.	Carteret, N. J.	"	9/25/40	1	"	1214	Trip
*Timothy R	Blister Copper								
#79	Blister Copper	S.S. Sagadohoc, N. Y.	Carteret, N. J.	"	9/26/40	1	"	136	9/23-9/26
#8 Barges	Munitions	West Point, N. Y.	Brooklyn, N. Y.	Transmarine Co., N.Y.C.	9/30/40	1	"		Trip
*McGeeney Boys								388	"
*Murray Lake	Copper &							611	"
*William R	Copper Matte	S.S. Grove, Brooklyn, N. Y.	Carteret, N. J.	Amer. So. African Line, N.Y.C.	10/31/40	1		413	"
#War Chief								265	"
#Warrior								257	"
#Warrior								37	"
*Murray Bay	Copper Matte								
*Murray Gulf	& Copper	S.S. Challenger, Brooklyn, N. Y.	Carteret, N. J.	"	12/21/40		"	2347	"
*Nell Petrie									
*George R									
*Murray Glen									
*Murray C	Copper Matte	S.S. Executive, Brooklyn, N. Y.	Carteret, N. J.	"	12/21/40		"	1657	"
*Murray Hill									

Vessels owned by McAllister Bros. and bare boat chartered to applicant.
* Other vessels under charter to applicant.

[fol. 320]

EXHIBIT 13

Towing

All Towing Performed by Applicant's Tugs

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1933 to December 31, 1933					
Argo		Rockyhill, Conn.	Carteret, N. J.	S.S. Brant, an	1/ 3/33	1	Oral		Trip
*W. H. McAllister with dumpers	Constr. Fill			Bouker Contr. Co., N.Y.C.	4/30/31				
*McAllister Bros. with dumpers	"	Carteret N. J.	Rockyhill, Conn.	Simpson Spence & Young, N.Y.C.	1/ 4/33	1	"		12/31/32-1/4/33
Barge #94	"	Glen Cove, N. Y.	Pt. Morris, N. Y.	Bouker Contr. Co., N.Y.C.	1/ 7/33	1	"		Trip
Bouker #66	"	Glenwood, N. Y.	Glen Cove, N. Y.	"	1/ 7/33	1	"		"
Barge K	"	Port Morris, N. Y.	Great Neck, L. I.	"	1/ 7/33	1	"		"
Bouker #66	"	Glen Cove, N. Y.	Pt. Morris, N. Y.	"	1/ 7/33	1	"		"
Bouker #84	"	Glen Cove, N. Y.	Pt. Morris, N. Y.	"	1/ 7/33	1	"		"
S. F. E. #500	"	Brooklyn, N. Y.	Staten Is., N. Y.	"	1/ 7/33	1	"		"
Agnes Dempsey	"	New York, N. Y.	Staten Is., N. Y.	"	1/ 7/33	1	"		"
Barge #64-H	"	New York, N. Y.	Staten Is., N. Y.	"	1/ 7/33	1	"		"
Ceres	"	New York, N. Y.	Staten Is., N. Y.	"	1/ 7/33	1	"		"
S. F. E. #505	"	New York, N. Y.	Staten Is., N. Y.	"	1/ 7/33	1	"		"
S. F. E. #155	"	Brooklyn, N. Y.	New York, N. Y.	"	1/ 7/33	1	"		"
Bouker #62	"	Pier 1, N. Y.	Pier 92, N. Y.	"	1/ 7/33	1	"		"
Bouker #88	"	Yonkers, N. Y.	New York, N. Y.	"	1/ 7/33	1	"		"
[fol. 321]									
Bouker #76-H	"	GrvsdN. Y.	Greenville, N. J.	"	1/ 7/33	1	"		"
Bouker #76-H	"	Greenville, N. J.	Pt. Liberty	"	1/ 7/33	1	"		"
Bouker #76-H	"	Pt. Liberty	Pier 1, N. Y.	"	1/ 7/33	1	"		"
Bouker #50	Fill	Gravesend, N. Y.	East Rockaway, N. Y.	"	4/ 6/33	1	"		"
Bouker #102	"	East Rockaway, N. Y.	Staten Is., N. Y.	"	4/ 6/33	1	"		"
Bge. Beaver	Fuel	Staten Is., N. Y.	Roseton, N. Y.	Gulf Refining Co., N.Y.C.	5/31/33	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	6/18/33	1	"		"
Bouker #56	Fill	New York, N. Y.	East Rockaway, N. Y.	"	8/19/33	1	"		"
Bouker #101	"	New York, N. Y.	East Rockaway, N. Y.	"	8/19/33	1	"		"
Bouker #102	"	East Rockaway, N. Y.	New York, N. Y.	"	8/19/33	1	"		"
Bouker #104	"	East Rockaway, N. Y.	New York, N. Y.	"	8/19/33	1	"		"
Bouker #63	"	East Rockaway, N. Y.	Rockway Point, N. Y.	"	8/19/33	1	"		"
Seaboard #37	"	Mouth of Creek, Brooklyn, N. Y.	Jones Beach, N. Y.	"	8/19/33	1	"		"
Transmarine #123	"	Brooklyn, N. Y.	Jones Beach, N. Y.	Transmarine Trans. Co., N.Y.C.	8/21/33	1	"		"
Transmarine #123	"	Brooklyn, N. Y.	Jones Beach, N. Y.	"	8/26/33	1	"		"
Transmarine #122	"	Brooklyn, N. Y.	Jones Beach, N. Y		8/26/33	1	"		"
[fol. 322]									
W. J. Frank	Constr. Fill	Jones Beach, N. Y.	Brooklyn, N. Y.	"	9/12/33	1	"		"
Unknown	"	New York, N. Y.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	9/13/33	1	"		"
F. K. Snare #180	"	New York, N. Y.	Jones Beach, N. Y.	"	9/13/33	1	"		"
2 Catsmarans	"	New York, N. Y.	Jones Beach, N. Y.	"	9/13/33	1	"		"
W. Frank	"	Brooklyn, N. Y.	Jones Beach, N. Y.	Transmarine Trans. Co., N.Y.C.	9/ 6/33	1	"		"
*McAllister Bros.	"	New York, N. Y.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	9/20/33	1	"		"
Seaboard #70	"	New York, N. Y.	Jones Beach, N. Y.	"	10/18/33	1	"		"
Martha	"	Stapleton, N. Y.	Jones Beach, N. Y.	"	10/18/33	1	"		"
*McAllister Bros.	"	Stapleton, N. Y.	Jones Beach, N. Y.	"	10/27/33	1	"		"
*McAllister Bros.	"	New York, N. Y.	Jones Beach, N. Y.	"	11/16/33	1	"		"
*McAllister Bros.	"	New York, N. Y.	Jones Beach, N. Y.	"	11/18/33	1	"		"
Unknown		Havestraw, N. Y.	New York, N. Y.	O'Donnell Transp Co., N.Y.C.	11/29/33	1	"		"
Unknown		Beacon, N. Y.	New York, N. Y.	"	11/29/33	1	"		"
Argo		E. Chester, N. Y.	Stamford, Conn.	Simpson, Spence & Young, N.Y.C.	12/14/33	1	"		"
Argo		Stamford, Conn.	New York, N. Y.	"	12/15/33	1	"		"
[fol. 323]									
Husted	Fill	Hoboken, N. J.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	12/18/33	1	"		"
Seaboard #39	"	Stapleton, N. Y.	Jones Beach, N. Y.	"	12/18/33	1	"		"
Seaboard #55	Fuel	Bayonne, N. J.	Fall River, Mass.	Seaboard Shipping Corp., N.Y.C.	12/27/33	1	"		"
Seaboard #55	"	New London, Conn.	Fall River, Mass.	"	12/28/33	1	"		"
Seaboard #55	"	New London, Conn.	Fall River, Mass.	"	12/29/33	1	"		"
Seaboard #55	"	Bristol, Conn.	Newport, R. I.	"	12/30/33	1	"		"

* Vessels owned by McAllister Brothers and bare boat chartered to applicant.

[fol. 324]

EXHIBIT

Towing

All Towing Performed by Applicant's Tugs

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1934 to December 31, 1934					
Seaboard #55	Fuel	Newport, R. I.	New Haven, Conn.	Seaboard Shipping, N.Y.C.	1/ 5/34	1	Oral		Trip
Seaboard #55	"	New Haven, Conn.	Bayonne, N. J.	"	1/ 6/34	1	"		"
Unknown	Fill	New York, N. Y.	East Rockaway, N. Y.	Bouker Contr. Co., N.Y.C.	1/ 9/34	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	"	1/17/34	1	"		1/15-1/17
Unknown	"	New York, N. Y.	Jones Beach, N. Y.	"	1/20/34	1	"		1/20-1/21
Unknown	"	New York, N. Y.	Jones Beach, N. Y.	"	2/22/34	1	"		2/22-2/24
Oil Barge City Service	Fuel	New York, N. Y.	Renssler, N. Y.	Crew Levick Co., N.Y.C.	4/22/34	1	"		Trip
Oil Barge City Service	"	Kingston, N. Y.	Perth Amboy, N. J.	"	4/22/34	1	"		"
Cherokee		Kingston, N. Y.	Edgewater, N. J.	Sullivan D/D Corp., Brooklyn, N. Y.	4/22/34	1	"		"
City Service #8	"	Perth Amboy, N. J.	Kingston, N. Y.	Crew Levick Co., N.Y.C.	4/27/34	1	"		"
City Service #8	"	Perth Amboy, N. J.	Kingston, N. Y.	"	4/30/34	1	"		"
Oshee	Oil	Gulfport, N. Y.	Troy, N. Y.	Murray Transp. Co., N.Y.C.	5/ 1/34	1	"		"
Oshee	"	Enroute	Troy, N. Y.	"	5/ 2/34	1	"		"
Bouker #58-H	Fill	Staten Is., N. Y.	East Rockaway, N. Y.	Bouker Contr. Co., N.Y.C.	5/ 9/34	1	"		"
Bouker #71-H	"	Staten Is., N. Y.	East Rockaway, N. Y.	"	5/ 9/34	1	"		"
[fol. 325]									
Bouker #56-H #70-H	Fill	East Rockaway, N. Y.	Staten Is., N. Y.	"	5/ 9/34	1	"		"
Barge #22	Copper Cable	Bayonne, N. J.	Jones Beach, N. Y.	Amer. Smelting Co., N.Y.C.	5/18/34	1	"		5/11-5/17
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	5/20/34	1	"	20	5/15-5/20
Unknown	"	New York, N. Y.	Jones Beach, N. Y.	"	5/21/34	1	"		5/21-5/22
Dredge Empire State		Claremont, N. J.	Jones Inlet, N. Y.	W. H. Gahagan Inc., N.Y.C.	5/25/34		"		Trip
Southern Cross	Fill	Staten Is., N. Y.	East Rockaway, N. Y.	Bouker Contr. Co., N.Y.C.	6/12/34	1	"		"
Bouker #50	"	Staten Is., N. Y.	East Rockaway, N. Y.	"	6/12/34	1	"		"
Bouker #59	"	Staten Is., N. Y.	East Rockaway, N. Y.	"	6/12/34	1	"		"
Unknown	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	"	8/ 7/34	1	"		8/5-8/7
Bouker	"	New York, N. Y.	Jones Beach, N. Y.	"	8/18/34	1	"		8/18-8/21
Oshee	Oil	Staten Is., N. Y.	West Point, N. Y.	Murray Transp. Co., N.Y.C.	8/28/34	1	"		Trip
Bouker	Constr. Fill	New York, N. Y.	Jones Beach, N. Y.	Bouker Contr. Co., N.Y.C.	9/19/34	1	"		9/19-9/21
Bouker	Fill	"	"	"	9/19/34	1	"		Trip
Bouker	"	"	"	"	9/19/34	1	"		"
Bouker	Constr. Fill	"	"	"	9/29/34	1	"		9/19-9/21
Bouker	"	"	"	"	10/13/34	1	"		10/7/34
Argo	Fuel Oil	Carteret, N. J.	Rocky Hill, Conn.	Simpson, Spence & Young, N.Y.C.	11/ 8/34	1	"		11/13/34

(# Vessels owned by McAllister Brothers and bare boat chartered to applicant.)

[fol. 326]

EXHIBIT

Towing

All Towing Performed by Applicant's Tugs

Schedules of Applicant's Operations, Since January 1, 1940, and Prior Thereto, As They Appear from the Books and Records of Applicant Kept in the Regular Course of Business

McAllister Lighterage Line, Inc.

Vessel	Commodity	Port From	Port To	Shipper	Date	Trips	Contract Written or Oral	Cargo Tonnage	Duration
				January 1, 1935 to December 31, 1935					
Westmoreland		Bridgeport, Conn.	Edgewater, N. J.	P. F. Martin Inc., Phila., Pa.	5/29/35	1	Oral		Trip
#Victory		Tremley Point, N. Y.	Haverstraw, N. Y.		12/12/35	1	"		"
#Victory		New York, N. Y.	Haverstraw, N. Y.		12/13/35	1	"		"
#Victory		Haverstraw, N. Y.	Union D/D, N. J.		12/13/35	1	"		"
[fol. 327]									
				January 1, 1936 to December 31, 1936					
Nana Scully A. N. Abee Blue Seal	Coal	Bridgeport, Conn.	Norwalk, Conn.	Blue Line, Inc., N.Y.C.	3/29/36	1	Oral	1,000	2/7-2/10 3/21-4/13
[fol. 328]									
				January 1, 1937 to December 31, 1937					
Dumper Jrs. #3	Fill	Brooklyn, N. Y.	Sea & return	Bouker Contr. Co., N.Y.C.	3/ 7/37	1	Oral		Trip
Dumper #81	"	Brooklyn, N. Y.	Sea & Return	"	3/ 7/37	1	"		"
Bouker #98	"	Brooklyn, N. Y.	Sea & Return	"		1	"		"
Tanker Greene	Fuel	Bayway, N. J.	Haverstraw, N. Y.	McAllister Tankers Corp., N.Y.C.	12/ 1/37	1	"		"
Tanker Greene	"	Haverstraw, N. Y.	Tidewater Bay, N. J.	"	12/ 2/37	1	"		"
Tanker Greene	"	Tidewater Bay, N. J.	Stamford, Conn.	"	12/ 3/37	1	"		"
[fol. 329]									
				January 1, 1938 to December 31, 1938					
Monarch		Hempstead Harbor, N. Y.	Brooklyn, N. Y.	Merritt-Chapman & Scott, N.Y.C.	8/12/38	1	Oral		Trip
Monarch		Hoboken, N. J.	Hempstead Harbor, N. Y.	"	8/ 6/38	1	"		"
Bouker #54		Hempstead Harbor, N. Y.	Pt. Morris, N. Y.	"	8/ 8/38	1	"		"
Monarch		Hempstead Harbor, N. Y.	Pt. Morris, N. Y.	"	8/ 8/38	1	"		"
[fol. 330]									
				January 1, 1940 to December 31, 1940					
Point Light	Bldg.Material	So. Amboy, N. J.	So. River	Eastern Terra Cotta, N.Y.C.	9/ 6/40	1	Oral		Trip
[fol. 331]									
				January 1, 1941 to December 31, 1941					
Carib Star	Misc.	Scotland Light Ship	Quarantine	Merritt-Chapman & Scott, N.Y.C.	5/ 5/41	1	Oral		Trip
Oil Barge Val #2	Oil	Haverstraw, N.Y.	Elizabethport, N. J.	McAllister Tankers Corp., N.Y.C.	8/15/41	1	"		"
Oil Barge Val #2	"	Elizabethport, N. J.	Haverstraw, N. Y.	"	8/15/41	1	"		"
[fol. 332]									
				January 1, 1942 to December 31, 1942					
Derrick Chapman Bros.		Staten Is., N. Y.	Cape Cod, Mass.	Merritt-Chapman & Scott, N.Y.C.	4/24/42	1	Oral		4/21-4/25
Services of Chapman Bros.		Cape Cod, Mass.	Valant Rock, Conn.	"	4/26/42	1	"		Trip
#James McAllister	Services	Standing by and towing, New London, Conn.		"	4/28/42	1	"		"
Derrick Chapman	"	Tending derrick and towing at New London, Conn.		"	4/29/42	1	"		"
#James McAllister	"	Standing by and towing, New London, Conn.		"	4/30/42	1	"		"
#James McAllister	"	Standing by and towing, New London, Conn.		"	5/ 2/42	1	"		"
#James McAllister	"	Standing by and towing, New London, Conn.		"	5/ 3/42	1	"		"
#James McAllister	"	At New London, Conn.		"	5/ 4/42	1	"		"
#James McAllister	"	New London, Conn.	New York, N. Y.	"	5/12/42	1	"		"
#McAllister #58	Ammunition	Gravesend Bay, N. Y.	Iona Is., N. Y.	Healing	3/10/42	1	Written		"

Vessels owned by McAllister Brothers and bare boat chartered to applicant.

[fol. 333] EXHIBIT 14

Consolidated Balance Sheet

McAllister Bros., Inc.
McAllister Li-terage Line, Inc.

As of October 31, 1938.

Assets			
Cash in Bank		57921.48	
Petty Cash		1041.25	
			58962.73
Accounts Receivable		57216.69	
Accounts Receivable, Reserve		2297.77	
			54918.92
Loans & Exchange			1789.79
Other Accounts			
William McAllister		3773.69	
John McAllister		3238.50	
Isabel McAllister, Estate		3478.08	
			10490.27
Stocks (Globe & Rutgers)			642.60
McAllister Tankers			8300.00
Boats & Equipment			
Tugs, Derricks, Barges		209119.48	
Diesel Engine		18894.71	
Pen Rose Engine		3052.97	
Boiler Equipment		720.00	
		231787.16	
Depreciation Reserve		38737.92	
			193049.24
Automobile		857.03	
Automobile Depreciation		411.70	
			445.33
Pre-Paid Insurance			
Bros., Wm. H.—Isabel		5191.97	
Isabel, Fire Ins.		360.20	
Bess-Baeges-Pier, Fire Ins.		626.68	
Heeran Zane, Advance		1957.12	
			8135.97
Unliquadated Account			17551.98
Total Assets			$354286.83
Liabilities			
Accounts Payable			56145.54
Notes Payable			
Corn Exchange Bank		70000.—	
Isabel McAllister Est.		80850.—	
Amer. Locomotive		7500.—	
			158350.—
James McAllister			1318.68
Boat Damage Claims			3593.11
Social Security			5.—
Note Interest Accrued			6785.67
Capital		140490.46	
Deficit	15011.13		
Net Profit 1938	2609.50	12401.63	
			128088.83
Capital & Liabilities			$354286.83

[fol. 334] Consolidated Profit & Loss

McAllister Bros., Inc.
McAllister Lighterage, Inc.

Nov. 1, 1937 to Oct. 31, 1938

Boat Operations

	Cost	Sales	Profit	Loss
Lighterage	86710.09	97226.67	10516.58	
Victory	5054.06	13294.91	7640.85	
Outside Towing	17742.65	23148.92	5406.27	
Charles D.	4772.67	1545.14		3227.53
William H.	46000.75	66562.40	20561.65	
Brothers	28540.34	39160.70	10620.36	
Bowker 6	7455.19	8318.72	863.53	
Charter 48	373.53	3525.21	3151.68	
Charter Victory	8134.84	9325.49	1190.65	
Isabel	18639.33	19313.08	673.75	
Lear C.	5.—			5.—
Gross Profit	57392.79			57392.79
	281421.24	281421.24	60625.32	60625.32
Gross Profit			57392.79	

Selling Expense

Bayonne Yard	19880.37	
Selling Expense	2270.53	
		22150.90
		35241.89

General Deductions

Office Salaries	16107.—	
Boat Depreciation	19727.43	
Interest Paid	7490.53	
Office Rent	2209.85	
Telephone	2137.59	
Sundries	5448.83	
Unemployment Fund	1797.95	
Sundries Taxes	1088.15	
Legal Expense	1099.40	
Bond Debits	2422.06	59528.79
		24286.90*

Other Income

T. Campbell (acct. written off)	1641.25	
Pen Rose Insurance	8000.00	
Boat Insurance Claims	1881.03	
W. Sims (acct. Written Off)	6600.00	
Boat Sales	6542.50	
Sullivan D/D Adjustment	2161.62	
Dividends	70.00	
		26896.40
Net Profit		2609.50

*Red in copy.

[fol. 335]

EXHIBIT 15

Consolidated Balance Sheet

McAllister Bros., Inc.
McAllister Lighterage Line, Inc.

As of October 31, 1940

Assets			
Cash in Bank	74452.28		
Petty Cash	1485.59		
		75937.87	
Accounts Receivable		97340.59	
Other Accounts Receivable		11106.27	
Loans & Exchange		2413.06	
			186797.79
Fixed Assets			
Boats & Equipment	266463.24		
Less—Depreciation	65713.72		
		200749.52	
Fur. & Fixt. & Auto	3202.11		
Less—Depreciation	796.96	2405.15	
			203154.67
Investments			
Hudson Towboat		25000 —	
McAllister Tankers		8300 —	
Globe & Rutgers		642.60	
			33942.60
Pre-Paid Insurance, etc.			19929.77
Total Assets			$443824.83
Liabilities			
Accounts Payable		122085 —	
Notes Payable		139350 —	
			261435 —
Interest Accrued			1249.48
Capital		140490.46	
Tax Refund	540.68		
Boat Adjustment	515 —		
		1055.68	
		141546.14	
Deficit Nov. 1, 1939	8665.72		
Profit for year 1940	48259.93		
		39594.21	
			181140.35
Total Capital & Liabilities			$443824.83

[fol. 336] Consolidated Profit & Loss

McAllister Bros., Inc.
McAllister Lighterage Line, Inc.

Year Ending October 31, 1940

Analysis	Cost	Sales	Profit	Loss
Lighterage	369288.00	476818.30	107530.30	
Brothers	40823.81	84504.07	43680.26	
John E.	53880.08	89547.84	35667.76	
William H.	41464.17	50288.78	8824.61	
James	71178.87	113022.22	41843.35	
Isabel	55732.82	46707.86		9024.96
Gerard	8408.01	7939.14		468.87
Shifting & Towing	35452.74	34903.17		549.57
Outside Towing	4574.25	4538.75		35.50
James J. Murray	13172.59	10657.78		2514.81
Boat Damage	58029.59	28730.40		29299.19
McAllister-Healing	36418.43	48033.34	11614.91	
Australian	2203.98			2203.98
Madeline Murray	1965.36	1941.79		23.57
Canadian	726.31			726.31
Gross Profit	204314.43			204314.43
	997633.44	997633.44	249161.19	249161.19
Gross Profit			204314.43	
Operating Expenses				
Bayonne Yard		51041.94		
Selling Expense		20455.63		
			71497.57	
			132816.86	
General Deductions				
Office Salaries		27789 —		
Boat Depreciation		18883.74		
Interest Paid		4828.64		
Insurance		888.88		
Boat & Car Loss		607.24		
Rent		2461.11		
Telephone		3459.75		
Sundries		13075.14		
Unemployment Insurance		9126.92		
Franchise Taxes		1158.97		
Stationery & Printing		964.93		
Legal Expense		2337.56		
			85581.88	
			47234.98	
Other Income				
Scrap Iron Sold		543.95		
B/D Collected		10.—		
Insurance Claim		151.—		
Dividends		70.—		
Sundry Income		250.—		
			1024.95	
Net Profit				$48259.93

[fol. 337] EXHIBIT 16

Consolidated Balance Sheet

McAllister Bros., Inc.
McAllister Lighterage Line, Inc.

As of July 31, 1943

Assets			
Cash in Bank	8516.82		
Petty Cash	1701.06		
		86861.88	
Accounts Receivable		786288.56	
Other Accounts Receivable		15191.27	
Loans & Exchange		2685.85	
Stocks & Bonds		137392.60	
			1028420.16
Fixed Assets			
Boats & Equipment	578419.86		
Less—Depreciation	117321.71		
		461098.15	
Fur. & Fixt. & Auto	10346.30		
Less—Depreciation	2230.35		
		8115.95	
			469214.10
Suspense			678.52
Pre-Paid Insurance			19175.31
Total Assets			1517488.09
Liabilities			
Accounts Payable		338834.37	
Notes Payable		66400.—	
Penn. R. R. Damage Claims		12648.—	
Reserve for Taxes		3243.55	
Reserve for P/L Insurance		13234.06	
Reserve for Bond Subscription		660.—	
Reserve for Boat Fire Insurance		15000.—	
			450019.98
Capital & Surplus			
Capital		142662.19	
Surplus	380250.57		
Profit for nine months (1943)	544555.35		
		924805.92	
			1067468.11
Total Capital & Liabilities			1517488.09

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[fol. 338]

Consolidated Profit & Loss

McAllister Bros., Inc.
McAllister Lighterage Line, Inc.

Nine Months Ending July 31, 1943

Analysis	Cost	Sales	Profit	Loss
Lighterage	339566.11	497484.44	157918.33	
Towing & Shifting	241994.31	244579.56	2585.25	
Tug William H.	59475.51	98796.99	39321.48	
" Brothers	40968.97	101031.42	60062.45	
" Isabel	79233.36	108694.73	29461.37	
" James	78163.80	116990.85	38827.05	
" John E.	64340.19	104885.98	40545.79	
" G. M.	48537.82	67190.85	18653.03	
" Neptune	425.53			425.53
" Pelham	27795.70	52089.72	24294.02	
" Westerly	28914.47	61876.82	32962.35	
" Diligent	804.60			804.60
" Anaconda	67867.98	152880.22	85012.24	
" Catherine	73834.74	159274.40	85439.66	
" Leopard	65237.60	113602.48	48364.88	
" Edwards	2555.28			2555.28
" Antrim	35777.47	40178.56	4401.09	
" Express	40199.00	104427.47	64228.47	
Outside Towing	547.28	603.97	56.69	
McAllister-Healing	864294.12	1001376.40	137082.28	
Amer. Smelting	15682.03	17773.61	2091.58	
U. S. Metals	92219.08	128057.35	35838.27	
Tug A. P. Brown	1976.76	2074.35	97.59	
Gross Profit	903458.46			903458.46
	3173870.17	3173870.17	907243.87	907243.87

Gross Profit		903458.46	
Operating Expenses			
Bayonne Yard	67186.21		
Selling Expense	12895.15		
		80081.36	
		823377.10	
General Deductions			
Office Salaries	162562.74		
Boat Depreciation	22292.37		
Sundry Taxes	3276.48		
Interest Paid	740.89		
Office Rent	3728.36		
Telephone	6699.70		
Sundry Expenses	40529.11		
Boat Damage	21015.79		
Sundry Taxes	10854.—		
Unemployment Insurance	11268.12		
		282967.56	
		540409.54	
Other Income		4145.81	
Net Profit before Federal Taxes			$544555.35

[fol. 339] INTERSTATE COMMERCE COMMISSION

No. W-81[1]

MCALLISTER LIGHTERAGE LINE INC., CONTRACT CARRIER APPLICATION

Submitted ——. Decided ——.

Upon hearing and reconsideration, the Commission should find that applicant has failed to establish that public convenience and necessity requires operation by it on the Atlantic, coastal, and inland waterways. In other respects the findings in prior report, 250 I. C. C, 803, are affirmed.

Appearances as in prior report, and Maurice A. Krisel for applicants. A. M. Gould, William M. Smith, and A. R. Eldred for interveners in opposition to the application.

REPORT PROPOSED BY EXAMINERS MORRIS H. KONIGSBERG AND LEONARD WAY—Filed November 25, 1943

In the prior report 250 I. C. C. 803, (not printed in full) division 4, among other things, found that the McAllister Lighterage Line, Inc., applicant in No. W-81 and McAllister Brothers, Inc., applicant in No. W-217 were not in operation on January 1, 1940, and continuously since as contract or common carriers by water, in interstate or foreign commerce in the performance of transportation subject to part III of the Interstate Commerce Act. Application in No. W-81 was denied and in No. W-217 was dismissed. Upon petition of applicants the proceedings were reopened for hearing and reconsideration.

A hearing has been held at which applicant withdrew application W-217.

In application W-81, filed May 29, 1941, applicant sought a permit under section 309 (f) of part III of the act authorizing continuance in operation as a contract carrier by water, in interstate and foreign commerce in the transportation of commodities generally between the ports and points in New York and New Jersey. The application was in the alternative and requested a certificate if it is found that applicant is a common carrier.

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[1] This report embraces Docket No. W-217, McAllister Brothers- Inc., Contract Carrier Application.

At the hearing applicant requested that this application be amended by withdrawing its request for permit authorizing continuance of an operation as contract carrier, and substituting therefor a request for a certificate to continue an operation as a common carrier under section 309(a), and in the alternative for a certificate of public convenience [fol. 340] and necessity as a common carrier under section 309(c), from, to, and between all ports, Eastport, Maine, to ports in North Carolina, inclusive, over coastwise ocean routes and inland waterways, including Long Island Sound, Hudson River, Delaware and Chesapeake Canal, Delaware Bay, and intercoastal waterway, by tug, barge and general towage.

The amendment was objected to on the ground that it is broader in scope than the original application and there is no showing that notice of the amendment has been served on the States or other interested parties. Section 309(b) of the act and rules 38 and 39 of the General Rules of Practice require proof of service upon interested parties. The certificate of service in the application before amendment shows that copies of the application were served on the Governors of New York, New Jersey and Connecticut, and that notices of the filing of the application were served on certain competitors, but there is no proof of service of the amended application upon these or any other parties. The failure to serve notices of the intention to apply for a certificate of convenience and necessity embracing territories not included in the application filed or served would deprive the interested parties of a right to be heard. The Commission should sustain the objection.

In the prior report it was stated that:

> On January 1, 1940, and since that time, applicant has engaged in the general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous thereto.* Applicant's services within this area have consisted of (1) transportation of various commodities for shippers and consignees, and (2) the docking and undocking of vessels for other carriers.
>
> The transportation performed for shippers and consignees between points within the above-mentioned harbor area is exempted by section 303(g) (1) of the

act because it is not performed under common control, management, or arrangement with other carriers for continuous through movement to or from a place beyond the limits of the area. The towage performed for other carriers in docking and undocking of vessels is incidental to the transportation by those carriers, and applicant's operations are exempt under section 303(f)(2) to the extent that such transportation is subject to the act.

In 1939 applicant towed 2 derricks and a crane from and to points outside of the above-mentioned harbor area. During that year, and since, applicant engaged in no other transportation to or from points outside the harbor area, except for the movement of 213 tons of steel piling from the Claremont, N. J., railroad terminal to Fire Island, N. Y., in November, 1940. In April, 1942, applicant towed derrick barges and salvors' equipment for a company engaged in salvage operations.

[fol. 341] The towage of the derricks and the crane have been exempted from the requirements of part III of the act by our order of October 29, 1941, in Ex Parte No. 147; *Towage of Floating Objects*. Towage for persons engaged in salvage operations would be incidental to their operations, and applicant's service would be incidental to their operations, and applicant's service in connection with such operations is exempted by section 303(g)(2). Therefore, the only transportation performed by applicant which would be subject to regulation under part III of the act has occurred since January 1, 1940. Applicant must show that it has engaged in non-exempt operations on and after January 1, 1940, as well as since that date, in order to be entitled to a permit.

While not disputing the accuracy of these statements, it is applicant's position that its historical background and events following 1930 should also be considered.

Applicant or its predecessor has engaged in general transportation by water since 1864, and the business has been continuously owned by its founder and later by his descendants through four generations. The corporate set-up now consists of McAllister Brothers, Inc., which charters all of

its equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. At all times applicant has maintained at least one, two, or three vessels licensed for coastal operations and has always held itself out as ready, willing and able to participate in transportation at any time and has so advertised. It now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows and 9 barges, including 2 coastal tugs bought in 1941 and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 diesel-powered tugs to be operated by applicant as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future.

Applicant's activities in the past included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or operating for other companies, including a general barge and towing service between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920; a steamship was purchased in 1922 for ocean trading; in the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. And in the period between 1931 and 1933 operated a freight packet line between New York and Philadelphia, Pa., and maintained a regular schedule by way of the Delaware and Raritan Canal with freight delivered as far as Baltimore, Md., Wilmington, Del., and Norfolk by transshipment. This line consisted of barges propelled by a tug. A general line of commodities was carried and the operation continued until the canal was closed by its owners.

[fols. 342-344] Applicant's operations were seriously affected by the economic depression in the period 1930 to 1939; at various times within these years its operations were limited to one or two tugs and a few inland scows and lighters. The service was limited to the New York Harbor and its tributaries with a few occasional trips to Long Island Sound, up the Hudson River and coastwise. In the years 1938

to 1942 applicant transported more than 1,000,000 tons of metals, docked and undocked transoceanic vessels, and was otherwise engaged in war work for the Government within the confines of New York Harbor, and since January 1, 1940, all of applicant's available maritime equipment has been utilized in essential war work.

The facts related above show that applicant has performed only exempted transportation during the critical period, and that there is no basis for granting applicant any authority under the "grandfather" clause of the act.

With respect to the alternate request for a certificate for public convenience and necessity as a new operation. The only evidence bearing on this matter is the testimony of a representative of the American Metal Company, to the effect that this concern ships metal products to destinations beyond the New York Harbor by common carrier other than applicant and it would be practicable or desirable to have another carrier to avoid delays due to lack of equipment, and that in view of a prospective movement of a substantial movement of slag for points up the Hudson River, applicant was asked to bid on the transportation. With respect to the metal products, the shipments are now being transported by another carrier and there is no assurance that applicant would be permitted to participate in the transportation, and as to the slag it is a bulk commodity and exempt under section 303(b); and on the testimony of a representative of a broker engaged in the arranging for transportation of goods for shippers' account by tug and barge, to the effect that a substantial portion of 3,000,000 tons of commodities move by barge between points in Maine and all Atlantic and gulf ports, Cuba and West Indies. The movement of most of the commodities, such as fertilizers, coal, potatoes, and other commodities is seasonal and at times there is a shortage of floating equipment and some of applicant's equipment could be used if available, and that it could be used after the war provided that traffic assumes the proportions as in 1927 and 1928. No definite offer of any part of this traffic has been made to applicant and it is shown above that applicant has no available equipment for use outside of the New York Harbor at the present time. What the situation will be when the conditions become normal are speculative.

Upon hearing and reconsideration, the Commission should find that applicant has failed to establish that public

convenience and necessity requires operation by it on the Atlantic, coastal and inland waterways. In other respects, the findings in the prior report should be affirmed.

[fol. 345] BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

EXCEPTIONS TO PROPOSED REPORT ON BEHALF OF APPLICANT MCALLISTER LIGHTERAGE LINE INC.—Filed December 15, 1943

Statement

Examiners Morris H. Konigsberg and Leonard Way issued a proposed report in the above entitled matters after formal hearing on September 9, 1943, at the Hotel St. George, Brooklyn, New York, held to determine the operating rights and status under part III of the Interstate Commerce Act, of the applicants. Applicantion No. W-81 was heretofore denied and application No. W-217 dismissed (250 I. C. C. 803). Upon applicant's petition the proceedings were reopened for hearing and reconsideration. At the hearing, Applicant McAllister Brothers, Inc. (W-217) withdrew its application (R-9) * and no consideration need here be given to the status or rights of that applicant.

[fol. 346] Applicant McAllister Lighterage Line Inc., though having filed on May 29, 1941, an application for a permit as a contract carrier under section 309(f) of part III of the Interstate Commerce Act, with an alternative prayer that a certificate be issued if it be found to be a common carrier under the act, moved at the hearing (R-9, 16) to amend the application

> "so that it will be an application for common carrier certificate for commodities generally over the routes between the ports as the evidence may indicate hereinafter, and further amend it so that if such evidence is insufficient as a matter of law to establish grandfather rights under Section 309(a) of the Act that such evidence be considered as evidence of fitness, willingness

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* References are to minutes of the hearing unless otherwise indicated.

and ableness of public convenience and necessity under Section 309 (c) of the Act."

Exceptions

I. Applicant respectfully excepts to the following recommended findings and conclusions of the Examiners relating to the motion to amend the application to consider evidence of public convenience and necessity and ability to perform a carrier service by tug and barge and to render general towage service in support of, or as an alternative to, the application for a grandfather certificate under section 309(a) of the act (Report, 2):

> "The amendment was objected to on the ground that it is broader in scope than the original application and there is no showing that notice of the amendment has [fol. 347] been served on the States or other interested parties. Section 309(b) of the act and rules 38 and 39 of the General Rules of Practice require proof of service upon interested parties. The certificate of service in the application before amendment shows that copies of the application were served on the Governors of New York, New Jersey and Connecticut, and that notices of the filing of the application were served on certain competitors, but there is no proof of service of the amended application upon these or any other parties. The failure to serve notices of the intention to apply for a certificate of convenience and necessity embracing territories not included in the application filed or served would deprive the interested parties of a right to be heard. The Commission should sustain the objection."

II. Applicant respectfully excepts to the following findings and conclusions of the Examiners quoted from the Commission's prior report, relating to applicant's operations within the harbor limits of New York (Report, 2):

> "On January 1, 1940, and since that time, applicant has engaged in the general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous thereto.* Applicant's services within this area have consisted of (1) transportation

of various commodities for shippers and consignees, and (2) the docking and undocking of vessels for other carriers.

"The transportation performed for shippers and consignees between points within the above-mentioned harbor area is exempted by section 303(g) (1) of the act because it is not performed under common control, [fol. 348] management, or arrangement with other carriers for continuous through movement to or from a place beyond the limits of the area. The towage performed for other carriers in docking and undocking of vessels is incidental to the transportation by those carriers, and applicant's operations are exempt under section 303(f) (2) to the extent that such transportation is subject to the act."

III. Applicant respectfully excepts to the finding and conclusion of the Examiners, quoted from the prior report, that (Report, 3):

"the only transportation performed by applicant which would be subject to regulation under part III of the act has occurred since January 1, 1940. Applicant must show that it has engaged in non-exempt operations on and after (before?) January 1, 1940, as well as since that date, in order to be entitled to a permit." (Word "before" supplied by writer.)

IV. Applicant respectfully excepts to the conclusion of the Examiners that applicant is "not disputing the accuracy of" the statements quoted in the foregoing exceptions "II" and "III" (Report, 3).

V. Applicant respectfully excepts to the conclusion of the Examiners (Report, 4) that

"applicant has performed only exempted transportation during the critical period, and that there is no basis for granting applicant any authority under the 'grandfather' clause of the act."

and to the failure of the Examiners to find and relate all of the facts as appear from the evidence relating to acts of transportation and towage.

[fol. 349] VI. Applicant respectfully excepts to the failure of the Examiners to conclude, after finding (Report, 4) that

> "Applicant's operations were seriously affected by the economic depression in the period 1930 to 1939; at various times within these years its operations were limited to one or two tugs and a few inland scows and lighters."

that the applicant was in *bona fide* operation as a carrier by water on January 1, 1940, over the route or routes or between the ports as set forth in all of the uncontradicted evidence except

> "*as to interruptions of service over which the applicant or his predecessor in interest had no control.*" (Section 309(a), part III of the act.) (Italics supplied.)

and has so operated since except for such interruptions.

VII. Applicant respectfully excepts to the failure of the Examiners to find and conclude from all the evidence before them that applicant is entitled to a certificate under the "grandfather" clause as a common carrier by water of general commodities, by tug and barge, and in the rendition of general towage service, over the route or routes or between the ports hereinafter stated, and that the public convenience and necessity requires the issuance of such certificate.

Grounds for the Exceptions

The Examiners erred in assuming any interested party was prejudiced by the motion to amend; in failing to consider that the evidence offered in relation to the amendment [fol. 350] was not only offered to sustain the proposed amendment as an application under section 309(c) of the act, but also in support of the amended application under the "grandfather" clause of the act 309(a) to indicate the scope of the applicant's holding out as a common carrier of commodities generally by tug and barge and in the rendition of general towage services, its readiness, willingness and ability to perform the service under such holding out; and in failing to consider that interruptions of operations under such a holding out, over which it had no control,

affected its ability to prove extensive actual operations on the critical date and continuously since on the waterways concerning which it offered all of the evidence.

The Examiners wholly failed to consider the uncontradicted evidence that operations within the harbor limits of New York as defined by the Commission were actually performed under a common control, management or arrangement with other carriers, for a continuous through movement from a place beyond the limits of that area.

The Examiners erred in failing to give consideration to all of the evidence of actual operations by tug and barge and general towage, as well as evidence of an extensive holding out, which indicated substantial transportation, subject to regulation, interrupted only by causes beyond the control of the applicant.

The findings and conclusions of the Examiners that the applicant is not entitled to a certificate, either under the "grandfather" clause or under the public convenience and necessity clause of the act, is contrary to the uncon- [fol. 351] tradicted evidence of actual operations and holding out, except for interruptions beyond applicant's control.

Facts and Argument

The recommendation of the Examiners that the motion to amend the application to consider evidence of public convenience and necessity be denied should be overruled, in the sound discretion of the Commission, in furtherance of the public interest. No party really in interest was prejudiced by the amendment and the offered evidence. The hearing had been sufficiently publicized, and those parties who felt they had any interest in the applicant's operations appeared. The Trunk Line Association appears at almost every hearing on the applications of water carriers. The National Water Carriers Association likewise appears at most of them. Representatives of the several states which may have an interest have, to the writer's knowledge, not appeared at any of the hearings. The only party who voiced any objection was the Trunk Line Association. The McLain Lines, McLain Marine Corp. and McLain-Carolina Lines, Inc., appearing by Mr. Gould, voiced no objection to the amendment or to the evidence except as to rights applicant might have claimed to territory south of Norfolk, Va. and to the New York State Barge Canal (R. 71). In view

of this showing of lack of interest on the part of any persons who might have a real interest in the applicant's status and rights, even though the Commission need not give consideration on a "grandfather" application to an amend-[fol. 352] ment under the public convenience and necessity clause (*Transamerican Freight Lines, Inc.* v. *United States and Interstate Commerce Commission* (U. S. D. C., District of Delaware, August 10, 1493)), the entire picture of applicant's status and operations should be considered. Such consideration will materially aid in a fair and equitable determination (See proposed report F. Jacobus Transportation Co. Inc., Docket W-702, where the Examiner, though recommending a denial of a "grandfather" permit, recommended the issuance of a permit under the public convenience and necessity clause).

The following facts, with which there is no substantial dispute, were found by the Examiners (Report, 3, 4):

> "Applicant or its predecessor has engaged in general transportation by water since 1864, and the business has been continuously owned by its founder and later by his descendants through four generations. The corporate set-up now consists of McAllister Brothers, Inc., which charters all of its equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. At all times applicant has maintained at least one, two, or three vessels licensed for coastal operations and has always held itself out as ready, willing and able to participate in transportation at any time and has so advertised. It now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows and 9 barges, including 2 coastal tugs bought in 1941 and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 [illegible]sel-powered tugs to [fol. 353] be operated by app[illegible]t as agent for the government; one of these tugs [illegible] coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future.

"Applicant's activities in the past included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or operating for other companies, including a general barge and towing service between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920; a steamship was purchased in 1922 for ocean trading; in the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. And in the period between 1931 and 1933 operated a freight packet line between New York and Philadelphia, Pa., and maintained a regular schedule by way of the Delaware and Raritan Canal with freight delivered as far as Baltimore, Md., Wilmington, Del., and Norfolk by transshipment. This line consisted of barges propelled by a tug. A general line of commodities was carried and the operation continued until the canal was closed by its owners.

"Applicant's operations were seriously affected by the economic depression in the period 1930 to 1939; at various times within these years its operations were limited to one or two tugs and a few inland scows and lighters. * * * In the years 1938 to 1942 applicant transported more than 1,000,000 tons of metals, docked and undocked trans-oceanic vessels, and was otherwise engaged in war work for the Government within the confines of New York Harbor, and since January 1, 1940, all of applicant's available maritime equipment has been utilized in essential war work."

[fol. 354] A particularized study of the evidence discloses:

Freighting operations by tug and barge (Exh. 12)

From January 1, 1931 through December 31, 1932 applicant transported a wide variety of commodities. It carried boilers, oil in cans and cases, machinery, paper in bales, sugar in bags, Hession-cloth rags in bales, a clam shell bucket, lumber, kerosene in cases, assorted freight such as coffee and pepper in bags, prassava, construction fill, palm oil in cans and cases, paraffin wax in bags and

cases, germ copal, goat and sheep skins in bales, grape seed oil in cans, pyretheum flowers in barrels and porcelain in crates. From January 1, 1937 to December 31, 1937, it carried machinery, airplanes, guns and parts. Between January 1, 1940 and the end of the year 1942 applicant lightered within the limits of New York Harbor (and a substantial part of it was done under a common arrangement with American South African Line (R. 28-31) and other steamship lines (R. 58, 59)) a further variety of commodities consisting of copper, katanga, copper matte, copper blister, lead, copper powder, miscellaneous equipment, croya burlap bags, toluol in drums. During this same period it transported munitions and explosives outside of New York Harbor.

Applicant between January 1, 1931 and December 31, 1932 served the following ports: New Rochelle, N. Y., David's Island, N. Y., Philadelphia, Pa., Brooklyn, N. Y., Paulsboro, N. J., Greenville, N. J., Roslyn, L. I., N. Y., Delair, N. J., Long Island City, N. Y., Point Breeze, N. J., Hoboken, [fol. 355] N. J., Bayonne, N. J., Constable Hook, N. J., Staten Island, N. Y., New Brunswick, N. J., Brown Hook, N. J., Princeton, N. J., Trenton, N. J., South Philadelphia, Pa., Bordentown, N. J., Jersey City, N. J., Baltimore, Md., Weehawken, N. J. Between January 1, 1937 and the end of that year it served Albany, N. Y., Kingston, N. Y., Rondout Creek, N. Y., North Beach, N. Y., Port Washington, N. Y., New London, Conn. and Fort Wright, N. Y. In September of 1940 it ran to West Point, N. Y., besides serving Hastings, N. Y., Metuchen, N. J. and other points within the limits of New York Harbor.

The witness Merrick (R. 18-23) asked applicant to bid on a 30,000 cubic yard quantity movement of slag from Cartaret, N. J. to Peekskill, N. Y., although he was not sure whether the business would develop. Though the Examiners referred to this testimony, they stated that slag was a bulk commodity and exempt under section 303(b) of the act (Report, 4). There is ample evidence in the record of how tug and barge operations are carried on (R. 57, 58), and therefore no need to go into detail that barges move in flotilla tows and that commodities in bulk and non-bulk are transported therein or that more than three bulk commodities frequently move in a single tow. That same witness, representing the American Metal Company, Ltd.,

testified that his company has a large copper refinery in Cartaret, N. J. (R. 19) and that it ships its products from Cartaret to all plants throughout the official territory and elsewhere, a great deal to New England, and has also shipped lead to Bridgeport and New Haven, Conn. (R. 20, 21). He further testified (R. 21, 22):

[fol. 356] "Q. Now, you have a carrier performing service for you on this movement up Long Island, have you not?

A. We now have a carrier, yes.

Q. Could you tell us whether your company's requirements would require the services of another carrier in that territory?

A. Well, it would be very practicable to have another carrier going up to Long Island Sound, because at the present time we have only one on which we can depend.

Q. You only have one on which you can depend?

A. Yes, the only one we know.

Q. Now, why would it be practicable for your company to have another carrier in that territory?

A. Well, the carrier now serving that district, being the only one, is frequently quite busy. He has a limited number of boats and there are times when we have to wait several days for him to be able to furnish a boat.

Q. In other words——

A. Now, if there were more than one in the business we would be able to call on another carrier in cases where the one is busy.

Q. In other words, there have been occasions when your shipments have been tied up for lack of equipment?

A. Yes."

Witness Smith (R. 73-84), an employee of Maxwell Harris and Harris & Co. of Boston, who has been connected with the tug and barge industry for 27 years, testified to the manner in which Mr. Harris arranges for the placing and moving of around three million tons of commodities a year. He said (R. 76, 77):

"Q. Could you give us an estimate in percentages of the volume of traffic that Mr. Harris arranges for by [fol. 357] tug and barge compared to other brokers?

A. Well, I don't know what volume other brokers do. I know that Mr. Harris, in round figures, is moving around 3,000,000 tons of commodities a year at the present time.

Q. Would you say that he controls a very substantial portion of the tonnage by tug and barge?

A. He does, a great proportion of it.

Q. Probably most of it, does he not?

A. Most of it, yes.

Q. Now, give us, briefly, a description of the nature of the commodities that Mr. Harris handles, arranges for transportation.

A. Well, we arrange, as far as we can—we confine ourselves to the bulk commodities, due to the inherent nature of the barge, without the handling gear, etc. Coal, fertilizer, steel and iron scrap, loose bags and various and sundry other commodities. (Consulting document). Gypsum rock, gypsum products, cement, sulfate rock, both out of Maine. That is his only——

Q. His only operation out of Maine?

A. Yes.

Q. When does the season start?

A. Usually from October to March.

Q. When does it stop?

A. The seed potatoes move to the south in March.

Q. Is that a big movement?

A. Tremendous.

Q. Those potatoes move in bags?

A. Yes, sir, they do.

Q. Have they been moving by barge?

A. Yes, sir.

Q. Well, will you tell us how they came to move by barge?

[fol. 358] A. Well, the rails could not handle them. We were called in to pinch hit.

Q. When was that that you were called in to pinch hit?

A. Three years ago.

Q. Now, are you going to need any boats to move potatoes this year?

A. We have been so advised.

Q. Where are you going to find them?
A. We will have to scratch, that is all."

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(R. 78, 79):

"Q. Now, from where to where do these cargoes generally move that Mr. Harris arranges for?
A. Well, we range from points as far down as Cape Breton Island, that is above Nova Scotia, down as far as United States Gulf ports, Cuba. We get across into the Islands, West Indies.
Q. Do you touch at intermediate points along the eastern seaboard?
A. Almost all of the intermediate points."

• • • • • • •

A. All right, start from Eastport, Maine, then, down. Machias, Rockland, Searsport, Bangor, Winterport, Portland, and all the intermediate ports, such as Casteen, Belfast.
Q. Well, take some of the bigger ports on the coast.
A. Portland; Portsmouth, New Hampshire.
Q. Boston; New York?
A. Yes.
Q. Philadelphia?
A. Yes.
Q. Norfolk?
—. All through. Almost everyone of them is touched in the course of our operation.
[fol. 359] Q. And does that include ports on Long Island Sound, such as Bridgeport, New Haven, Providence?
A. Yes, Fall River, New Bedford, all of those ports.
Q. Have you arranged for any traffic on the Hudson River?
A. Very little.
Q. Now, do you know whether Mr. Harris has been having any conversations with Mr. McAllister with reference to coal movement on Long Island Sound?
A. Yes, sir, I believe he has.
Q. Do you know the nature of that conversation?
A. No, I don't."

• • • • • • •

(R. 80, 81):

"Q. Would you like to get a couple of barges to run the potato trade?

A. Yes, sir, we would, right at the moment.

Q. Would you like to get some barges to run the fertilizer business?

A. Yes, sir.

Q. Like to get some in the coal business?

A. Yes, sir.

Q. Could you use any portion of McAllister's fleet if it were available to you right now?

A. We certainly could.

Q. Could you use it after the war, assuming normal traffic operations?

A. If we go back to the days of, say, 1927, 1928, why we certainly would welcome any additional equipment that we could get."

[fol. 360] and the witness McAllister (R. 85) testified as to his conversations with Mr. Harris (R. 85-87):

"Q. You heard Mr. Smith testify just a minute ago?

A. I did.

Q. You know Maxwell Harris?

A. I do.

Q. Did he come to see you last week?

A. He did.

Q. Tell us what you said and what he said.

A. He came in. He became aware of the fact that we had two large coastwise barges in Philadelphia, and he came to us and told us there was a very drastic need for that type vessel and would we consider putting them in commission for service this winter on the Sound, east, and possibly, in the spring, come back with potatoes. I don't remember the exact season, but that is what he wanted to do, act as broker and we would operate these barges.

Q. What did you tell him?

A. We told him we expected to bring them to New York and put them into commission.

By Mr. Gould:

Q. Mr. McAllister, on this potato question again. Is that in bulk or in bags?

A. In bags, I understand it.

Q. If you issued no tariff or schedule of rates how could you carry it?

A. I understand that is one reason we are here.

Q. Weren't you advised originally to file tariffs, when you filed your original application?

A. No.

Mr. Gould: That is all.

Exam. Konigsberg: Anything, Mr. Eldred?

By Mr. Eldred:

Q. Who proposes to operate these barges in the coal trade for Harris?

[fol. 361] A. We would be the actual operators. He would be the broker procuring.

Q. Who would tow them?

A. We may tow them, or other towers that Mr. Maxwell Harris arranges for them.

Q. This is for the coal trade?

A. Coal, yes, sir.

Q. Points on the Sound?

A. East.

Mr. Krisel: Boston?

The Witness: Boston and Maine and anywheres he may want us to go."

As to General Towage (Exh. 13)

The record amply shows that applicant held itself out to tow for anyone and everyone anywhere (Exh. 8). Exhibit 7 being a schedule of the insurance in effect on several of the vessels of the fleet shows navigation limits as follows:

"U. S. coastwise and inland water tributary thereto between Boston, Mass. and Norfolk, Va.; however voyages within these limits to be made via Cape Cod Canal, Long Island Sound, Delaware River and Bay, Chesapeake and Delaware Canal and Chesapeake Bay."

Actual towage operations from January 1, 1933 through December 31, 1942 (Exh. 13) show that general towage was performed for various shippers and carriers to Rocky Hill, Conn., Carteret, N. J., Glen Cove, N. Y., Port Morris, N. Y., Glenwood, N. Y., Great Neck, L. I., Staten Island, N. Y., Yonkers, N. Y., Greenville, N. J., Gravesend, N. Y. [fol. 362] East Rockaway, N. Y., Roston, N. Y., Jones Beach, N. Y., Rockaway Point, N. Y., Haverstraw, N. J., Beacon, N. Y., Eastchester, N. Y., Stamford, Conn., Hoboken, N. J., Bayonne, N. J., New London, Conn., Fall River, Mass., Newport, R. I., Bristol, Conn., New Haven, Conn., Rensselaer, N. Y., Kingston, N. Y., Edgewater, N. J., Perth Amboy, N. J., Troy, N. Y., Gulfport, N. Y., Clairmont, N. J., West Point, N. Y., Tremley Point, N. Y., Norwalk, Conn., Bayway, N. J., Tidewater Bay, N. J., Hempstead Harbor, N. Y., South Amboy, N. J., Elizabethport, N. J., Cape Cod, Mass.

* * * * * * *

Here is an applicant which, as the Examiners themselves have found, operates over 100 vessels of all descriptions, capable of serving (R. 44, 45) both on the high seas and on the inland waterways adjacent thereto on the eastern seaboard. Here is an applicant, a family corporation, whose founders go back four generations. Is this applicant to be denied a certificate to operate as a common carrier of commodities generally, on waterways which it has served in the past and rendered general towage service on waterways other than New York Harbor solely because since January 1, 1940 it has placed its fleet at the disposal of the war effort (R. 52) and for several years prior to January 1, 1940, its operations were curtailed and virtually at a standstill by reason of economic conditions which destroyed normal traffic? The witness Glatzmayer, Executive Vice-President of the Harbor Carriers of the Port of New York, (R. 32) since its inception, and who has been in the shipping [fol. 363] business by tug and barge around the port of New York for about 46 or 47 years, testified (R. 34, 35):

> "To the best of my recollection, the latter part of 1930 the marine business began to fall off. The depression set in and became very pronounced and acute. Some time went by and during the period, I would say, from about 1932 or mid-year 1932, right

up to and including a part of 1939, or it may have been the latter part of 1938, there was a very stagnant condition in the entire marine trade due to economic conditions.

By Mr. Krisel:

Q. And do you know, of your own knowledge, Mr. Glatzmayer, the extent to which fleets of tugs and barges were laid up in this port?

A. I think that every owner who had any measurable amount of equipment had a very substantial part of it laid up."

The witness McAllister confirmed Mr. Glatzmayer's testimony (R. 52, 53). He testified (R. 53):

"A. I would say that the depression was felt a little sooner than 1932 in New York Harbor. 1930 is the year I remember when business really slumped off. It became progressively worse until 1937 was the first year where there were some signs of life, but nothing much to talk about.

Q. Well, how did you notice the general conditions, as far as the tug and barge traffic was concerned, on the eastern seaboard?

A. Practically none at all.

Q. To what extent was your fleet tied up in 1932 to 1939?

A. Well, I saw us go from over a hundred vessels in operation in 1930 to approximately one tug and about four or five barges in 1935.

[fol. 364] Q. And what happened after 1935?

A. After 1935 there was a very gradual pickup till 1937 and then there was a slump off again until 1940.

Q. When the war business started?

A. When the war business, which was the first real pickup in New York Harbor."

Exhibits 12 and 13 likewise confirmed the testimony of Messrs. Glatzmayer and McAllister. The applicant's freighting operations are shown from January 1, 1931 through November 28, 1932. From then on there is an interruption in freighting operations until the year 1937 and thereafter there was a further interruption in such

operations until the year 1940 when the applicant's lighterage business in connection with the war effort really commenced. The towage operations (Exh. 13) likewise confirm the virtual disappearance of traffic during the years of the depression. And so the Examiners found (Report, 4), but having found interruption in service for causes beyond the control of the applicant, the Examiners fail to consider the mandate of section 309(a) of the act, which provides:

> "*Provided, however,* That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) *except, in other event, as to interruptions of service over which the applicant or its predecessor in interest had no control.*" * * * (Italics supplied.)

[fol. 365] Interruptions merely from the standpoint of time is not controlling. The interruption, regardless of time, must be one which does not indicate an intention on the part of the applicant to abandon any of its "grandfather" rights. In *Transamerican Freight Lines, Inc.* v. *United States and Interstate Commerce Commission* (U. S. D. C., District of Delaware, August 10, 1943), the Court said:

> "It is difficult to find a scheme in the various rulings of the Commission as to the length of time necessary to constitute an interruption of service, and we shall not attempt to make a pattern of the various administrative rulings on the question. Time considered *in vacuo* is not the sole, and may not even be the dominant, consideration. As in cases involving the equitable doctrine of laches, the mere passage of time may or may not be significant depending upon the attendant circumstances. It seems to us that the various decisions of the Commission, which hold that a particular length of time is insufficient to constitute an interruption of service, have little weight as precedents when cited to different factual situations. What the Commission does, we think, is to examine the evidence of interrup-

tion or continuous operation under the particular facts of each case.

We think there was sufficient evidence before the Commission upon which it predicated its *finding that there was no affirmative intent on the part of Daniel to continue his operations.*" (Italics supplied.)

In *Williams Transportation Co., Inc.* (2 F. C. C. 155); an interruption of approximately three years was approved. In *Edward Francis Reilly*, common carrier application (3 [fol. 366] F. C. C. 191, C. C. H. Reports paragraph 30,224), the period was approximately five years. In *John Minnehan* (26 M. C. C. 533), Division 5 stated:

"In determining whether an interruption of service was beyond the control of an applicant, the length of time of such interruption, as well as the character of the operation and the circumstances under which it occurred, must be considered. *In this case applicant has made every effort to continue this part of his operations.* Further, it is not very probable that he could have transported the same commodities or class of commodities for anyone except the U. S. Government. In addition, applicant has availed himself of the only means of obtaining this traffic, i. e., submitting bids each year for the work, and the record shows that a carrier was given but one chance to make a bid for the entire year's work. Applicant does not transport general commodities, except in so far as this one phase of his operations could be said to come within that term. He has otherwise confined his operations to the transportation of a few specific commodities. *In the circumstances, we conclude that the interruption is one over which applicant had no control.*" (Italics supplied.)

There is not a scintilla of evidence in the record to warrant any finding of intention on the part of applicant to discontinue efforts to obtain traffic or any of its existing operations. On the contrary, the entire record is replete with evidence of a desire to obtain business wherever and whenever it was available. The applicant's good faith in this respect cannot be better illustrated than by the mere fact that it controlled over 101 vessels and had total capital assets in 1938 of ap- [fol. 367] proximately $350,000.00 (Exh. 14); as of October

31, 1940, over $440,000.00 and as of July 31, 1943, over a million and a half dollars. To deny this applicant a certificate would not be consistent with the public policy declared in the act nor in the public interest.

A liberal construction of part III of the act entitles this applicant to relief. The principle enunciated in *Moran Towing & Transportation Co., Inc.* [(W-12), Proposed Report, December 4, 1943], is directly applicable to all of the facts and circumstances surrounding this applicant's operations. The proposed report of the Examiner in that case confirmed the decision of Division 4 and quoted the following appropriate language (Sheets 7, 8):

> "The facts related above show that applicant has been engaged in general towage services which are ordinarily performed by towing vessels, and the evidence shows that applicant did not attempt to restrict its services to those operations which have been exempted. If we were to deny the application, applicant would no longer be able to hold out an unlimited general towage service to the public, but would be required to confine its services to exempted operations. Such limitation would require that applicant circumspectly examine every tender of business in order to determine whether or not the transportation would be exempted and would deprive the public of unlimited services which have been available. The facts in this case show that on January 1, 1940, applicant was holding itself out to the public, and has held itself out since, as a common carrier by water in the performance of general towage service, and has actually performed [fol. 368] such service indiscriminately. (Quoting from Division 4, *Moran* case.)
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> "It will be noted that in neither instance is there any reference to whether the transportation performed by the carrier is or is not subject to regulation. In determining a carrier's status and the scope of its operations during the 'grandfather' period, its entire operation should be considered, and not merely that part which the Congress has seen fit to make subject to regulation. To find that 'grandfather' rights may be granted only to the extent that a showing is made as

to performance of regulated transportation requires the reading into the law of language which, in fact, is not there.

"This matter is particularly important in instances like the present where an applicant is seeking a certificate covering all commodities or general cargo. Obviously no carrier actually transports all commodities, and therefore the bona fides of an applicant's operations depend on the representative character of the transportation performed. It may well be that the carrier holds itself out to, and actually does, transport all traffic offered to it from and to all points covered by its application but that the great bulk of such transportation is exempt from regulation. *It seems clear that if we shut our eyes to all of applicant's transportation except that which is subject to regulation, we get an incomplete and distorted picture of the nature and extent of its operations.* To place limitations upon 'grandfather' rights predicated upon that view would be unjust and unreasonable, and is not contemplated by law." (Quoting from *Russell Bros. Towing Co., Inc.*, 250 I. C. C. 429.) (Italics supplied.)

[fol. 369] To find a fair and reasonable picture of all of applicant's operations, a rule of reasonableness should be applied. The length of time before the critical date need not necessarily be important upon all the facts and circumstances. In the *Hughes* case, Docket W-463, Division 4 examined operations as early as 1935. In view of interruptions in service beyond the control of the applicant, the period of time to be considered prior to January 1, 1940, should, of course, be considerably increased. The applicant was in *bona fide* operation as a common carrier by water on January 1, 1940. It never ceased to do business, but unfortunately, by reason of causes beyond its control, its operations were substantially curtailed. To find the true extent of its operations it would be only fair and reasonable to go back to a period of time just prior to those interruptions.

Conclusion

1. All of the evidence, both of actual operations under the "grandfather" clause and of that in support of the amendment to include public convenience and necessity,

indicates that applicant should be entitled to a certificate as a common carrier by water of commodities generally by non-propelled vessels with the use of separate towing vessels and in the rendition of general towage services from and to ports and points from Maine to Norfolk, Va., and all intermediate ports; to and from all ports and points on Long Island Sound and the Hudson River to the head of the Barge Canal; and to and from ports and points on [fol. 370] waters tributary to the foregoing, including Chesapeake Bay, the Delaware and Chesapeake Canal and Cape Cod Canal.

2. If the evidence of public convenience and necessity is to be disregarded as supporting the applicant's holding out under the "grandfather" clause and in support of public convenience and necessity, nevertheless, applicant, on the basis of actual operations, interrupted for causes beyond its control, is entitled to a certificate as a common carrier by water of commodities generally by non-propelled vessels with the use of separate towing vessels and to render general towage services to and from all ports and points from Boston, Mass. to Baltimore, Md. coastwise; Chesapeake Bay, the Delaware and Chesapeake Canal; Long Island Sound to Newport, R. I. (both sides of Long Island Sound); the Hudson River to the head of the Barge Canal; New York Harbor as defined and all ports and points on waterways tributary thereto.

Respectfully submitted, Maurice A. Krisel, Attorney for Applicant, Registered Practitioner, 29 Broadway, New York City.

[fols. 371-372] Certificate of Service

I hereby certify that I have this day served a copy of the foregoing brief upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to each party.

Dated at New York, N. Y., this 14 day of December, 1943.

Maurice A. Krisel, Attorney.

[fol. 373] BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION ON BEHALF OF THE APPLICANT FOR REOPENING AND RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT—Filed December 15, 1943

Comes now the McAllister Lighterage Line, Inc., the above named applicant, and respectfully petitions the Commission to re-open the above entitled proceeding for the purpose of reconsidering its decision therein in respects set forth below and to grant petitioner an opportunity to express its views more fully in oral argument. In support of said petition, applicant respectfully alleges:

1. On February 7, 1944, Division 4 made its decision in the above entitled proceeding from which the following appears at Sheet 2:

> "By application filed May 29, 1941, McAllister Lighterage Line, Inc., sought a permit under the provisions of section 309(f) of part III of the act authorizing continuance of the operation in which it was engaged on January 1, 1940, and since, as a contract carrier by water, in interstate and foreign commerce, in the transportation of commodities generally, between ports and points in New York and New Jersey. The application [fol. 374] was in the alternative and requested a certificate if we found applicant to be a common carrier. At the hearing applicant requested that this application be amended by eliminating the request for a permit as a contract carrier, and substituting therefor a request for a certificate to continue operation as a common carrier under the 'grandfather' provisions of section 309(a), * * *."

and at sheets 3 and 4 made the following findings of fact and conclusions of law:

> "Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate setup now consists of McAllister Brothers, Inc., which charters all of its equipment to McAllister Lighterage

Line, Inc., the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs, and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 diesel-powered tugs to be operated by it as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all times applicant has maintained at least one vessel licensed for coastal operations.

"Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and [fol. 375] managing or operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933 a freight packet line was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried.

"Since 1933 applicant's operations have been confined primarily to the New York Harbor area. Some towing for other carriers and of bulk commodities has been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time

its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

"Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression, and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its con- [fol. 376] trol and must be considered under the mandate of section 309(a); that at various times during the years of depression its operation was limited to 1 or 2 tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of section 309(a) an applicant, in order to be entitled to 'grandfather' rights, must show that it was in bona fide operation on January 1, 1940, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to 'grandfather' rights."

2. On all of the undisputed evidence the only question before the Commission is one of law:

"Is this applicant to be denied a certificate to operate as a common carrier of commodities generally, on waterways which it has served in the past and rendered general towage service on waterways other than New York Harbor solely because since January 1, 1940 it has placed its fleet at the disposal of the war effort (R. 52) and for several years prior to January 1, 1940, its operations were curtailed and virtually at a standstill by reason of economic conditions which destroyed

[fol. 377] normal traffic?" (Applicant's Exceptions, p. 18.)

3. Section 309(a) of part III of the Interstate Commerce Act provides in part as follows:

> "*Provided, however*, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) *except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control.* * * *" (Italics supplied.)

4. The Examiners found (Proposed Report, Sheet 4):

> "Applicant's operations were seriously affected by the economic depression in the period 1930 to 1939; at various times within these years its operations were limited to one or two tugs and a few inland scows and lighters. * * * was otherwise engaged in war work for the Government within the confines of New York Harbor, and since January 1, 1940, all of applicant's available maritime equipment has been utilized in essential war work."

Division 4 found that since January 1, 1940, applicant's fleet had been engaged almost exclusively within New York Harbor in the performance of lighterage and other work [fol. 378] *essential to the war effort*. The division failed to find, although all the evidence warranted such finding, and the examiners so found, that between 1933 and 1940 the applicant's operations were curtailed by reason of economic forces. Perhaps it is to be inferred from Division 4's opinion that the Division found interruptions in service between 1933 and 1940 caused by the economic depression but it has not affirmatively said so. If it did so find, it was in error in failing to conclude that the paucity of operations of the applicant between 1933 and January 1, 1940, were due to interruptions beyond the control of the applicant.

Division 4 clearly and concisely stated applicant's contention: (Sheet 4, Division 4's Report) that the interruptions in service were due to a lack of business resulting from the depression and, later, because all of applicant's equipment was and is now used in essential war work, which interruptions in normal traffic operations were beyond its control and must be considered under the mandate of section 309(a); that at various times during the years of the depression applicant's operation was limited to one or two tugs and a few inland scows and lighters and that there was no abandonment of its service. Without reference to the uncontradicted evidence of the underlying reasons for a lack of traffic, subject to part III of the Act, prior to January 1, 1940, Division 4 proceeded to repeat (what applicant readily conceded) that the evidence of record showed that for a period of over 10 years applicant performed only an inconsequential amount of transportation of a kind that is [fol. 379] now subject to the act; it failed to make any finding or conclusion about the reasons for such inconsequential amount of transportation. Division 4 concluded, again without reference to the evidence of the reasons therefor, that the operations of the applicant, prior to the setting in of adverse economic conditions, were too remote to establish bona fide operations on January 1, 1940. Applicant concedes that the operations through 1932 would ordinarily be too remote, but it offered a full and complete explanation for the virtual cessation of traffic, subject to regulation, since 1932, which Division 4 has failed to consider.

As to applicant's operations since January 1, 1940, applicant again conceded that virtually its entire operations were confined to the New York Harbor area but explained by uncontradicted evidence that such condition was due to the entire fleet being placed at the disposal of the war effort. Yet, Division 4 concluded therefrom that applicant "is not holding itself out at the present time to perform such transportation" solely because it has made its considerable facilities available, "voluntarily", "to exempt transportation within the limits of New York Harbor."

5. The witness Glatzmayer, Executive Vice-President of the Harbor Carriers of the Port of New York (R. 32) since its inception, and who has been in the shipping business by

tug and barge around the port of New York for about 46 or 47 years, testified (R. 34, 35):

"To the best of my recollection, the latter part of 1930 the marine business began to fall off. The depression set in and became very pronounced and acute. [fol. 380] Some time went by and during the period, I would say, from about 1932 or mid-year 1932, right up to and including a part of 1939, or it may have been the latter part of 1938, there was a very stagnant condition in the entire marine trade, due to economic conditions.

By Mr. Krisel:

Q. And do you know, of your own knowledge, Mr. Glatzmayer, the extent to which fleets of tugs and barges were laid up in this port?

A. I think that every owner who had any measurable amount of equipment had a very substantial part of it laid up."

The witness McAllister confirmed Mr. Glatzmayer's testimony (R. 52, 53). He testified (R. 53):

"A. I would say that the depression was felt a little sooner than 1932 in New York Harbor. 1930 is the year I remember when business really slumped off. It became progressively worse until 1937 was the first year where there were some signs of life, but nothing much to talk about.

Q. Well, how did you notice the general conditions, as far as the tug and barge traffic was concerned, on the eastern seaboard?

A. Practically none at all.

Q. To what extent was your fleet tied up in 1932 to 1939?

A. Well, I saw us go from over a hundred vessels in operation in 1930 to approximately one tug and about four or five barges in 1935.

Q. And what happened after 1935?

[fol. 381] A. After 1935 there was a very gradual pickup till 1937 and then there was a slump off again until 1940.

Q. When the war business started?

A. When the war business, which was the first real pickup in New York Harbor."

Exhibits 12 and 13 confirmed the testimony of Messrs. Glatzmayer and McAllister. The applicant's freighting operations were shown from January 1, 1931 through November 28, 1932. From then on there was an interruption in freighting operations until the year 1937 and thereafter there was a further interruption in such operations until the year 1940 when the applicant's business in connection with the war effort really commenced. The towage operations (Exh. 13) likewise confirmed the virtual disappearance of traffic during the years of the depression. And so the Examiners found (Report, 4).

Division 4 failed to give any consideration to the foregoing facts and circumstances of record. These facts and circumstances are the salient ones in the applicant's case. As to remoteness of operations, if the Commission finds interruptions for causes beyond applicant's control, time, alone, is unimportant. The test of interruptions beyond applicant's control is (1) time in relation to evidence affirmatively establishing *an intent not to continue operations (Transamerican Freight Lines Inc.* v. *U. S. and Interstate Commerce Commission*, U. S. D. C., Del., Aug. 10, 1943) and (2) whether the interruptions in service, regardless of time, are due to reasons and causes which are within the [fol. 382] power of the applicant to control *(Gregg Cartage* v. *U. S. and Interstate Commerce Commission*, 316 U. S. 74). Applicant has met the test in both particulars.

(1) In the *Transamerican* case the Court said:

> "It is difficult to find a scheme in the various rulings of the Commission as to the length of time necessary to constitute an interruption of service, and we shall not attempt to make a pattern of the various administrative rulings on the question. *Time considered in vacuo is not the sole, and may not even be the dominant, consideration.* As in cases involving the equitable doctrine of laches, the mere passage of time may or may not be significant depending upon the attendant circumstances. *It seems to us that the various decisions of the Commission, which hold that a particular length of time is*

insufficient to constitute an interruption of service, have little weight as precedents when cited to different factual situations. What the Commission does, we think, is to examine the evidence of interruption or continuous operation under the particular facts of each case.

"We think there was sufficient evidence before the Commission upon which it predicated its *finding that there was no affirmative intent on the part of Daniel to continue his operations.*" (Italics supplied.)

There is not a scintilla of evidence in the record to warrant a finding of intention on the part of applicant to discontinue efforts to obtain traffic or to abandon any of its "grandfather" rights. On the contrary, the entire record is replete with evidence of a desire to obtain business wherever and whenever it was available.

[fol. 383] (2) The second part of the test presents the real issues in the case:

(a) whether the economic conditions which adversely affected the entire tug and barge industry between 1933 and 1940 and, as to applicant, tied up all but a few of its boats, is a cause within applicant's control.

(b) whether, since January 1, 1940, the so-called "voluntary" confinement by applicant of its facilities to "the limits of New York Harbor" in "work essential to the war effort", was voluntary in the sense of being a cause which applicant could control.

In the *Gregg Cartage* case the Supreme Court (3 justices dissenting) held, as a matter of law, that bankruptcy is a cause *within* an applicant's control; the applicant could have controlled its destiny with respect thereto, could have provided against that kind of a contingency. Whatever may be said on the philosophy of controlling one's business with or without an eye on bankruptcy, it cannot be said, with any degree of fairness and equity, that the adverse economic conditions between 1933 and 1940 *was* a cause which a mature and rational person could by his own conduct control. Nor can it be said that the "voluntary" placing by the applicant of its facilities at the service of the war effort within the confines of New York Harbor was a controllable choice

which would take applicant without the exception contained in section 309(a). If such choice is a cause which applicant could control, then it must be stated, forcefully, that the Commission places its seal of approval upon the high premium of loss of "grandfather" rights which an [fol. 384] applicant must pay when it gives up normal business activities for the limited and concentrated war service which patriotism demands of all citizens. Would it not be fair and equitable, rather, to construe the interruption clause as meaning that the impact of war is a cause beyond an applicant's control which makes it necessary to voluntarily place a fleet of boats where it would best serve the war effort?

Suppose, instead of the applicant having "voluntarily" placed its fleet at the disposal of the war effort within the confines of New York Harbor the government had requisitioned that fleet for the very same service, could it then be contended that the requisition of the vessels was not an interruption in service and holding out beyond applicant's control? On principle there is no difference in the two situations. Yet the Commission has issued many certificates to water lines whose services have been interrupted by reason of the requisition for war service of their entire fleets.

The regulatory law is remedial legislation designed to serve the public interest by preserving transportation facilities. "This Act should be liberally construed to preserve the position which those like (applicant) have struggled to obtain in our national transportation system. To freeze them into the precise pattern of their prior activities as was done here not only may alter materially the basic characteristics of their service; it also may well be tantamount to a denial of their statutory rights." (*U. S. v. Carolina Freight Carriers Corp.*, 315 U. S. 475.) And [fol. 385] Mr. Justice Douglas repeated this injunction in his dissenting opinion in the *Gregg Cartage* case (*supra*):

> "Congress has provided that those who obtained a position in the competitive transportation system should be allowed to retain the fruits of their struggle. * * * We should not permit those statutory grants to be whittled away on the basis of technical and legalistic grounds which find no expression in the statute however much the administrative chore may be alleviated."

The Commission has ruled that interruptions of service owing to floods, snow, unsafe or impassable roads, highway construction, droughts which destroy a carrier's chief source of business, ill health, strikes, or the illegal action of governmental authorities constitute grounds for holding that an interruption of service is beyond an applicant's control. (*Waltz Transportation, Inc.*, 10 M. C. C. 30, 33; *Lewis McKay*, 4 M. C. C. 93, 94; *Edwards Motor Transit Co., Inc.*, 2 M. C. C. 73, 74; *Inter-Carolinas Motor Bus Co.*, 21 M. C. C. 633, 635; *Walter Stages, Inc.*, 24 M. C. C. 451, 454; *Magee Truck Lines, Inc.*, 28 M. C. C. 386, 389; *Barnes Truck Co., Inc.*, 24 M. C. C. 465, 467; *H. Bruce Blackburn*, 20 M. C. C. 747, 748-749; *Motor Freight Express*, 26 M. C. C. 374, 375; *Transamerican Freight Lines, Inc.*, 28 M. C. C. 493, 502; *W. H. Tompkins Co.*, 29 M. C. C. 359, 362.)

The uncontradicted evidence of the reasons and causes for the lack of traffic in the case at bar brings the applicant squarely within the principles enunciated in the foregoing authorities. It was error for Division 4 to have failed to make any findings or conclusions with respect to said reasons and causes and to wholly disregard the [fol. 386] uncontradicted evidence in respect thereof.

6. Division 4 failed to make any finding or conclusion with reference to the New York Harbor operations engaged in by the applicant in so far as such harbor operations are not exempt under the provisions of section 303 (g)(1) of part III of the Act. The evidence clearly established that a substantial part of the New York Harbor operation conducted by the applicant was carried on under a common arrangement with American South-African Line (R. 28-31) and other steamship lines (R. 58, 59) to or from a place without the limits of the harbor as part of a continuous through movement.

Wherefore, it is respectfully prayed that this proceeding be re-opened for reconsideration with respect to the matters above set forth; that oral argument be granted, and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted, Maurice A. Krisel, Attorney for Applicant, Registered Practitioner, 29 Broadway, New York 6, New York.

[fol. 387] VERIFICATION

STATE OF NEW YORK,
County of New York, ss.:

Maurice A. Krisel, being duly sworn, deposes and says: that he is counsel for petitioner in the above-entitled proceedings: that he has read the foregoing petition, and knows the contents thereof; that the same are true as stated, except as to matters and things if any, stated on information and belief, and that as to those matters and things he believes them to be true.

Maurice A. Krisel.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 6th day of March, 1944. Jeanne Salpeter (Sobel), Notary Public, Kings Co. Kings Co. Clks. No. 1284, Reg. No. 685-S-5; N. Y. Co. Clks. No. 1613, Reg, No. 979-S-5. Commission expires March 30, 1945.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party.

Dated at New York, N. Y., this 6th day of March, 1944.

Maurice A. Krisel, Attorney.

[fols. 388-392] Report of the Commission on Reconsideration, Feb. 7, 1944, omitted. Printed side page 20 ante.

[fol. 393] At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 7th day of February, A. D. 1944.

No. W-81

McAllister Lighterage Line, Inc. Contract Carrier Application

No. W-217

McAllister Brothers, Inc. Contract Carrier Application

ORDER

Further consideration having been had of the records in these proceedings, a hearing having been held, and said division, on the date hereof, having made and filed a report on

reconsideration containing its findings of fact and conclusions thereon, which report, together with the prior report of July 28, 1942, is hereby referred to and made a part hereof:

It is ordered, That the order entered in this proceeding on July 28, 1942, denying the application in No. W-81 and dismissing the application in No. W-217, which was postponed until our further order, shall take effect and be in force from and after May 3, 1944.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal.)

[fol. 394] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 10th day of April, A. D. 1944.

No. W-81

McAllister Lighterage Line, Inc. Contract Carrier Application

ORDER

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of applicant for reopening and reconsideration and its request for oral argument:

It is ordered, That said petition and request be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 394a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 395] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO RECORD—Filed November 30, 1945

McAllister Lighterage Line, Inc., Plaintiff-Appellant, adopts its Assignment of Errors as corrected by stipulation of record as its statement of the points to be relied upon and represents that the whole of the record as filed is necessary for the consideration of the case.

Dated, New York, November 28, 1945.

Krisel & Beck, by Maurice A. Krisel, Attorneys for Plaintiff-Appellant, McAllister Lighterage Line, Inc., 29 Broadway, Borough of Manhattan, New York, New York.

To: Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States, Washington 13, D. C.; Hon. J. Howard McGrath, Solicitor General of the United States, Attorney for Defendant Appellee, United States of America, Department of Justice, Washington 25, D. C.; [fols. 396-399] Hon. Edward Dumbauld, Special Assistant to the Attorney General, Of Counsel for the Defendant-Appellee, United States of America, Department of Justice, Washington 25, D. C.; Hon. Wendell Berge, Assistant Attorney General of the United States, Of Counsel for the Defendant-Appellee, United States of America, Department of Justice, Washington 25, D. C.; Hon. Daniel W. Knowlton, Chief Counsel of the Interstate Commerce Commission, Attorney for Defendant-Appellee, Interstate Commerce Commission, Washington 25, D. C.; Hon. John F. X. McGohey, United States Attorney for the Southern District of New York, Attorney for Defendant-Appellee, United States of America, United States Court House, Foley Square, New York, New York.

[fol. 400] [File endorsement omitted.]

[fol. 401] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—December 10, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Mr. Justice Jackson took no part in the consideration of this question.

Endorsed on Cover: File No. 50,319, Southern New York, D. C. U. S. Term No. 616. McAllister Lighterage Line, Inc., Appellant, vs. The United States of America and The Interstate Commerce Commission. Filed November 19, 1945. Term No. 616 O. T. 1945.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 616

McALLISTER LIGHTERAGE LINE, INC.,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTER-STATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

MAURICE A. KRISEL,
ROMAN BECK,
Counsel for Appellant.

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DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK

Civil Number 27,352

Statement re Jurisdiction

McALLISTER LIGHTERAGE LINE, INC.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants

STATEMENT OF PETITIONER, McALLISTER LIGHTERAGE LINE, INC., AS TO JURISDICTION, PURSUANT TO RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

The petitioner, McAllister Lighterage Line, Inc., appellant, having presented this day its petition for appeal now files this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree and judgment rendered against petitioner in the above-entitled proceeding by the District Court of the United States for the Southern District of New York, on August 9, 1945, and should exercise such jurisdiction in this case.

The Statutory Provision Believed to Sustain the Jurisdiction

This appeal is prosecuted from a final judgment and decree which dismisses, for want of equity, the petition of McAllister Lighterage Line, Inc. (herein called petitioner) to enjoin, set aside, and annul orders of the Interstate Commerce Commission entered on July 28, 1942, and February 7, 1944, in proceedings before that Commission designated on its records as Docket Numbers W-81 and W-217, wherein the Commission denied an application by petitioner under Section 309(a) of Part III of the Interstate Commerce Act for a certificate to engage in transportation of general commodities by water as a common carrier for hire over certain specified routes and between certain ports, in interstate commerce, and which final decree and judgment adjudges that the aforesaid orders of the Commission are in all respects valid.

The final decree and judgment here appealed from was entered in the District Court of the United States for the Southern District of New York, on August 9, 1945, by a statutory court consisting of one Circuit and two District judges specially convoked under and by virtue of the provisions of the Urgent Deficiencies Act, 38 Stat. 220, Title 28 U. S. C., Section 47.

Section 210 of the Judicial Code (28 U. S. C., Section 47a) provides, in part, that,

> "A final judgment or decree of the district court in cases specified in Section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, * * *."

It is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the

final judgment and decree before mentioned by virtue of the express statutory provisions just quoted.

The Statute Involved

Section 309(a) of Part III of the Interstate Commerce Act (49 U. S. C., section 909) is here involved. The pertinent provisions of that section are as follows:

> "(a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect."

The Date of the Final Judgment and Decree Sought to Be Reviewed, and the Date upon Which the Application for Appeal Is Presented.

The final decree and judgment here sought to be reviewed was entered in the Judgment Book of the United States District Court for the Southern District of New York, on August 9, 1945.

The petition for appeal herein was presented and filed on October 8, 1945.

Statement

After the usual proceedings before the Interstate Commerce Commission, including a hearing before an Examiner, an Examiner's Report, exceptions to that report, a Report and Order of Division "4," denying the application, and an order of the full Commission sustaining that denial, the orders of the Commission were made, which were in all respects sustained by the statutory court in the final decree and order here sought to be reviewed.

The Commission's orders, which the District Court upheld, denied an application by petitioner under Section 309(a) of Part III of the Interstate Commerce Act for a certificate to engage in transportation of general commodities by water as a common carrier for hire over certain specified routes and between certain ports, in interstate commerce. The Report of the Commission, on reconsideration, Division "4," sheets 3 and 4, contains the following findings concerning the nature and history of petitioner's business:

> "Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate set-up now consists of McAllister Brothers, Inc., which charters all of its equipment to McAllister Lighterage Line, Inc., the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tugboats ranging from 300 to 1,050 horsepower, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs and 2 ocean-going barges of 2,500 tons capacity. The United States Government has requisitioned the 2 coastal tugs but has allocated to applicant 2 diesel-powered tugs to be operated by it as agent for the gov-

ernment; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all times applicant has maintained at least one vessel licensed for coastal operations.

"Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La., and other eastern ports in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926 applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933 a freight packet line was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried."

The Report of Division 4, sheet 4, after making the aforesaid findings, correctly stated petitioner's contentions as follows:

"Applicant contends that the interruption of its service since 1930[1] was due to the lack of business because of economic depression, and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309(a); that at various times during the years of depression its operation was limited to 1 and 2 tugs and a few inland

[1] It should be noted, however, that the Commission's reference to 1930 as the beginning of the interruption in petitioner's service consequent upon the economic depression is incorrect, since as the Commission's findings relative to petitioner's operation of a freight line from 1931 to 1933 between New York and Philadelphia make clear, the interruption began in 1933.

scows and lighters, and that there was no abandonment of its service."

The Commission did not make any findings contrary to the facts embodied in these contentions, but concluded that petitioner was "not in bona fide operation on January 1, 1940, and since" (Report, sheet 4), basing its conclusion solely upon the findings that follow:

> "The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to 'grandfather' rights."

Petitioner contends:

(1) That, conceding the paucity of its operations during the depression period from 1933 through 1939, petitioner did not abandon the service on which it predicates "grandfather" rights, but on the contrary bent every effort to obtain traffic for its largely idle fleet; hence that the interruption in service during that period was beyond petitioner's control within the meaning of the "grandfather" clause. The Commission, as we hereinafter point out, omitted findings on this critical aspect of the case, even though petitioner sharply called the omission to the Commission's attention in its petition for reconsideration addressed to the full Commission (Petition for Reconsideration, pp. 6, 7, 13, 14).

(2) That the employment of petitioner's entire fleet in essential war work from 1940 onward was likewise an interruption in service beyond petitioner's control.

Petitioner instituted a proceeding under the Urgent Deficiencies Act (28 U. S. C. 47) in the United States District Court for the Southern District of New York to set aside and annul the orders of the Interstate Commerce Commission, which denied its aforesaid application for a certificate. The United States of America and the Interstate Commerce Commission were duly made parties to that proceeding and filed their Answers to the Petition. A specially constituted District Court was convened pursuant to the Urgent Deficiencies Act and the cause was duly argued and briefed before that Court. On the 16th day of July, 1945, the District Court dismissed the petition for want of equity and adjudged that the orders of the Commission were in all respects valid.

Annexed is a copy of the Court's opinion. The final decree and judgment was entered in conformity with this opinion on August 9, 1945. The gist of the District Court's holding may be summarized as follows:

(1) The Court held that the Commission was warranted in denying the application because petitioner forfeited its "grandfather" rights when it deviated from its customary routes in order to devote its entire fleet to the performance of essential war work within the limits of New York Harbor, notwithstanding that such interruption was temporary in nature, was dictated by the exigencies of war time traffic demands, and was required in the public interest. In its opinion, the Court acknowledges that the Commission did not make definite findings as to whether the interruption in service before January 1, 1940, was or was not beyond petitioner's control, and conceded that a remand asking for

such findings would be appropriate if the Commission's determination depended solely upon that question.

Several important and novel questions concerning the meaning and proper application of Section 309(a) of the Interstate Commerce Act are presented to the Court on this appeal. We shall not enumerate these questions in detail inasmuch as they are clearly indicated by petitioner's Assignment of Errors. From the foregoing, however, it is clear that the dominant question will be whether dedication by petitioner of its entire fleet to the performance of essential war work within the limits of New York Harbor constituted an interruption in service as the term "interruption" is used in Section 309(a) of the Interstate Commerce Act, and whether, conceding that such question should be answered in the affirmative, the interruption was one within petitioner's control as the term "control" is used in the Act. It is contended that the questions presented to the Court on this appeal are substantial, that they are novel, and that their correct resolution is important in a proper administration of Part III of the Interstate Commerce Act. It need hardly be added that aside from these paramount considerations of public interest, the questions presented on this appeal are of vital concern to petitioner inasmuch as the result of the judgment sought to be reviewed is to place petitioner in the position where its entire investment may be in jeopardy since without the operating authority it seeks, there may be no possibility of putting its large fleet to profitable use when traffic returns to its normal channels.

Cf. *Gregg Cartage & Storage Company* v. *United States*, 316 U. S. 74, 87;
Matter of Carpenter, 32 M. C. C. 580.

The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States on a

direct appeal to review the final decree and judgment here in question:

Barrett Line, Inc. v. *United States of America*, 89 Law. Ed. Advance Opinions, Vol. 89-No. 17 (pp. 1405-1418).

Alton R. Co. v. *United States*, 315 U. S. 15.

Cornell Steamboat Co. v. *United States*, 321 U. S. 634.

Respectfully submitted,

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APPENDIX "A"

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil Number 27,352

Opinion

McAllister Lighterage Line, Inc., *Petitioner*,

against

United States of America

and

Interstate Commerce Commission, *Defendants*

Before: Chase, Circuit Judge; Coxe, Clancy, District Judges

Krisel & Beck for Petitioner.

Edward M. Reidy, for Interstate Commerce Commission; Edward Dumbauld, Special Assistant to Attorney General for United States; Wendell Berge, Assistant Attorney General; John F. X. McGohey, United States Attorney.

Chase, Circuit Judge:

McAllister Lighterage Line, Inc., and another who is no longer a party to this proceeding, brought this suit in the District Court for the Southern District of New York to set aside an order made by the Interstate Commerce Commission under Part III of the Interstate Commerce Act. It was heard by a court of three judges as required by the Provisions of the Deficiencies Appropriation Act (28 U. S. C. A. sec. 41 (28), 47). The order denied an application by the petitioner for a certificate under the so-called "grandfather" clause in Section 309 (a) of Part III of the act, 49 U. S. C. A. Sec. 909(a) authorizing it to continue certain operations as a common carrier by water, and in

the alternative for a certificate based on public convenience and necessity. The alternative ground is no longer relied on. This section, in so far as now material reads as follows:

> "Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission; Provided, however, that, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending determination of any such application, the continuance of such operation shall be lawful. * * *"

The application for a certificate was made within the time allowed by the above section and a preliminary report was made by an examiner for the Commission recommending its denial. Thereafter, reconsideration was requested and hearings were had before an examiner, who filed a report likewise recommending the denial of the application. The petitioner filed exceptions to that report which were overruled by Division IV of the Commission in a report and order denying the application. Following that the full commission reviewed the proceedings and entered

the order now under review which was made effective as of May 3, 1944.

There is no question as to the jurisdiction of this court and the issues are (1) whether the Commission made adequate findings to the effect that the admitted interruptions in the service the petitioner sought authority to continue were due to causes over which it and its predecessor had no control, and (2) if the findings are sufficient, whether they are supported by the evidence. A subsidiary question was raised as to the right of the petitioner to broaden its application by amendment at the hearing before the examiner, which will, however, require consideration only if the order is set aside in whole or in part.

The petitioner in its proposed amended application sought a certificate under the "grandfather" clause to continue operation as a common carrier by water from, to and between all ports from Eastport, Me., to North Carolina, over coastwise ocean routes and inland waterways, including Long Island Sound, Hudson River, Delaware and Chesapeake Canal, Delaware Bay, and intercoastal waterway, by tug, barge and general towage.

In the report of Division IV which was confirmed by the full Commission, the following appears, and so far as the findings go they are supported by adequate evidence.

> "On January 1, 1940, and since that time, McAllister Lighterage Line, Inc., has been engaged in general transportation by water within the limits of New York Harbor as determined by our order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous thereto*. Applicant's services within this area have consisted of (1) transportation of various commodities for shippers and consignees, (2) the docking and undocking of vessels for other carriers, and (3) the furnishing of vessels under bare boat charters at per diem rates to the Pennsylvania Railroad Co.
>
> "The transportation performed for shippers and consignees between points within the above mentioned harbor area is exempted by section 303(g) (1) of the

act because it is not performed under common control, management or arrangement with other carriers for continuance through movement to or from a place beyond the limits of the area. The towage performed for other carriers in docking and undocking of vessels is incidental to the transportation by those carriers and applicant's operation is exempt under section 303(f) (2) to the extent that such transportation is subject to the act. In the furnishing of vessels under bare boat charters to the railroad, applicant is not a common or contract carrier as defined in sections 302(d) and (e) of the act.

"In 1939 applicant towed 2 derricks and a crane from and to points outside the above mentioned harbor area. During that year, and since, applicant engaged in no other transportation to or from points outside of the harbor area, except for the movement of 213 tons of steel piling from the Claremont, N. J. railroad terminal to Fire Island, N. Y. in November 1940. In April 1942, applicant towed derrick barges and salvor's equipment for a company engaged in salvage operations.

"The towage of the derricks and crane have been exempted from the requirements of Part III of the act by our order of October 29, 1941, in Ex Parte No. 147, *Towage of Floating Objects*. Towage for persons engaged in salvage operations would be incidental to their operations, and applicant's service in connection with such operations is exempted by section 303(g) (2). Therefore, the only transportation performed by applicant which would be subject to regulation under Part III of the act has occurred since January 1, 1940. Applicant must show that it has engaged in non-exempt operations on and before Jan. 1, 1940, as well as since that date, in order to be entitled to a permit. Under these circumstances, we must deny the request for authority to operate to and from points outside harbor area as defined in our order in Ex Parte No. 140.

"Applicant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. The corporate set up now consists of McAllister Bros. Inc. which charters all of its equipment to McAllister Lighterage Line Inc. the operating company. Both companies are mutually controlled. Applicant now owns or charters 101 units of floating equipment, including 16 tug boats ranging from 300 to 1,050 horse-power, 8 lighters, 4 derrick barges, 64 scows, 9 barges, 2 coastal tugs and 2 ocean-going barges of 2,500 ton capacity. The United States Government has requisitioned the two coastal tugs but has allocated to applicant two diesel powered tugs to be operated by it as agent for the government; one of these tugs is a coastal type. It is expected that other vessels will also be allocated to applicant under the same arrangement in the near future. At all time applicant has maintained at least one vessel licensed for coastal operations.

"Applicant's activities in the past have included ocean transportation, harbor towing, freighting, salvage, fishing, chartering, passenger excursions and managing or operating for other companies. A general barge and towing service was performed between Cuba, New Orleans, La., and other eastern parts in the period between 1900 and 1914; salvage operations were conducted between New York and Norfolk, Va., with trawlers in 1920, and a steamship was purchased in 1922 for ocean trading. In the period between 1919 and 1926, applicant operated on behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. Between 1931 and 1933, a freight packet line was operated between New York and Philadelphia, Pa. This service was performed with barges propelled by a tug and a general line of commodities was carried.

"Since 1933 applicant's operations have been confined, primarily, to the New York Harbor area. Some

towing for other carriers and all bulk commodities have been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

"Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309(a); that at various times during the years of depression its operation was limited to one or two tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of section 309(a) an applicant, in order to be entitled to 'grandfather' rights, must show that it was in bona fide operation on January 1, 1940, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact that applicant for a period of over ten years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant

has not established that it is entitled to 'grandfather' rights."

As the Commission has found on adequately supporting evidence that the petitioner was not in bona fide operation on January 1, 1940, over the routes and between the ports as to which the application was made and has not so operated since that day, the petitioner can, and in fact does, now rely on its contention and proof that it and its predecessors in interest formerly were engaged in such operations and that it would have continued to be so engaged on and after the critical date but for interruptions of the kind which under the statute are not to be treated as a break in the continuity of the service. Their former engagement in service was established and so was the interruption from about 1930 onward except for slight and irregular operations before 1940. The commission's findings to that effect are not erroneous because exempt operations were disregarded. This is not a contract carrier application like that in The Barrett Line Inc. v. United States et al. 324 U. S. — (Dec'd June 18, 1945) where bona fide chartering, whether the charterer used the vessels exempt or non-exempt carriage, was held evidence of bona fide operation by the owner within the terms of the applicable statute.

It is true that the Commission did not make a definite finding that the interruption in service before January 1, 1940, either was or was not beyond the control of petitioner and its predecessors and if decision were wholly dependent upon the fact as to that matter the petitioner would have substantial ground for insisting that the cause be remanded to the Commission for a finding on that point. It is essential, as a corollary to the now well settled rule that facts found by an administrative agency on substantial evidence are to be given effect by the courts, that administrative agencies make clear cut findings on all material and controverted issues of fact, "The administrative process will best be vindicated by clarity in its exercise." Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 197. See also, Baltimore and Ohio R. Co. v. United States, 22 F. Supp. 533.

Decision, however, does not depend entirely upon what the petitioner or its predecessors did or failed to do on or before January 1, 1940. The statute requires as a condition precedent to the granting of a "grandfather" certificate, where proof is not made of bona fide operation on January 1, 1940, and since that date, a showing that the interruption of service on and after the critical date was for causes not within the control of the petitioner or its predecessors. There was no proof whatever of subsequent operation and the Commission found both that the applicant "is not holding itself out at the present time to perform such transportation" and that it "has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor." This makes unimportant any deficiency in the findings as to the interruption of service before January 1, 1940. We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control. Its only excuse for failing to perform such service during the subsequent period is that after the outbreak of World War II all its facilities were required for service in New York Harbor and that after this country was attacked they would have been requisitioned by the government for such use had the petitioner not devoted them voluntarily to that purpose.

Whether or not that is so, however, is problematical, and the fact that the petitioner made no attempt to resume the service for which the "grandfather" certificate is now sought leaves in the realm of pure speculation what the effect of such an attempt might have been by way of any requisition by the government. We feel bound to give effect to the findings made by the Commission, and when that is done, the petitioner is left short of proof and findings necessary to entitle it to a reversal of the order denying its application for a certificate. The informed judgment of the Commission must be given effect when based on findings which are supported by the evidence. Mississippi Valley Barge Co. v. United States, 292 U. S. 282.

We adopt the findings made by the Commission as the findings of this Court. If this opinion is not believed to be a compliance with rule 52 F. R. C. P., the defendants may present proposed findings and conclusions together with their proposed decree.

HARRIE B. CHASE,
U. S. Circuit Judge.
ALFRED C. COXE,
U. S. District Judge.
JOHN W. CLANCY,
U. S. District Judge.

July 16, 1945.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 616

McALLISTER LIGHTERAGE LINE, INC.,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA

and

INTERSTATE COMMERCE COMMISSION,
Defendants-Appellees.

ON MOTION TO AFFIRM A DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF IN OPPOSITION

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Of Counsel.

November 1945.

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IN THE

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ON MOTION TO AFFIRM A DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF IN OPPOSITION

Opinion Below

The opinion of the specially constituted three-judge District Court for the Southern District of New York delivered upon rendering the final judgment sought to

be reviewed is set forth in the Jurisdictional Statement which has been filed pursuant to Rule 12 of the Rules of this Court. The opinion has not been reported as yet. No other opinions were rendered in the case.

Jurisdiction

The final judgment in the District Court was entered on August 9, 1945. The petition for appeal was allowed on October 8, 1945.[1] The jurisdiction of this Court is invoked under the Urgent Deficiencies Act of 1913 (38 Stat. 220; 28 U. S. C. 47) and Section 210 of the Judicial Code (28 U. S. C. 47a).[2]

Statute Involved

The relevant portions of the Interstate Commerce Act (54 Stat. 941(a); 49 U. S. C. 909(a); Section 309(a) of Part III of the Act) are set forth in the Appendix *infra*, page 11.

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[1] The motion to affirm states that the notice to the Attorney General of the State of New York required by 28 U. S. C. 47a was not served with the appeal papers. The fact is, however, that the appeal papers, including the aforesaid notice, were served on October 18, 1945, upon the Attorney General of the State of New York, and an acknowledgment of their timely service, signed by the Attorney General of the State of New York, has been filed with the Clerk of the Court below.

[2] This Court entertained appeals from District Court judgments based upon these statutory provisions in *Barrett Line, Inc.* v. *United States*, 89 L. Ed. Adv. Op. No. 17, pp. 1405-1418, *Alton R. Co.* v. *United States*, 315 U. S. 15, and *Cornell Steamboat Co.* v. *United States*, 321 U. S. 634.

Questions Presented

The motion to affirm the judgment of the District Court is predicated on one ground only, namely, that Appellant had forfeited its "grandfather" rights by dedicating its fleet to essential war work within New York Harbor—transportation exempt from regulation under the Act—after the statutory critical date, January 1, 1940. The questions presented by the motion to affirm are (1) whether, in the circumstances revealed by the record, the employment by Appellant of its facilities in essential war work of a kind exempt from regulation under the Interstate Commerce Act constituted an "interruption of service," within the meaning of Section 309(a) of Part III of the Act; and (2) further, assuming that the preceding question should be answered in the affirmative, whether such interruption in service was one over which Appellant had "control", within the meaning of the Statute.

Argument

Appellant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. In the past, Appellant's business activities have been varied and extensive and at one time were worldwide in scope. At the time of the hearing before the Commission, Appellant either owned or had under charter 101 units of floating equipment (Report of Division 4 of the Interstate Commerce Commission, Sheet 3), all of

which, as the Commission found, have been engaged in the performance of lighterage and other work essential to the war effort since January 1, 1940 (*Id.*, Sheets 3-4). In denying the "grandfather" rights sought by Appellant, the Commission based its conclusion upon two grounds—first, the Commission found that "for a period of over ten years [Appellant] has performed only an inconsequential amount of transportation of a kind that is now subject to the Act, * * *" (Report of Division 4, Sheet 4). The undisputed evidence before the Commission revealed that the impact of the general economic depression upon Appellant's business was so severe that at various times prior to 1940 its operations were limited to one or two tugs and a few inland scows and lighters. The Commission's examiner explicitly so found (Proposed Report Sheet 4). The Commission itself did not disturb this finding; its report is entirely silent on the subject. Before the Commission and the District Court, Appellant contended that the paucity of its operations during the depression period prior to January 1, 1940, was an interruption in service beyond Appellant's control, within the meaning of Section 309(a) of the Act. The Commission omitted findings on this aspect of the case even though Appellant sharply called the omission to the attention of the Commission in its petition for reconsideration addressed to the full Commission. The District Court made it clear, in the course of its opinion, that it would have remanded the proceeding to the Commission for appropriate findings on this critical aspect of the case if there were not an independent ground upon which the Commission's order could

stand. The District Court observed in this connection:

> "It is true that the Commission did not make a definite finding that the interruption in service before January 1, 1940, either was or was not beyond the control of petitioner and its predecessors, and if decision were wholly dependent upon the fact as to that matter the petitioner would have substantial ground for insisting that the cause be remanded to the Commission for a finding on that point. * * * "

The District Court sustained the order, however, upon the Commission's second ground, namely, the Commission's conclusion that appellant had "considerable facilities available [at the time of the hearing], the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor" (Report of Division 4, Sheet 4). This conclusion was arrived at in the teeth of an explicit fact finding by the Commission that, "since January 1, 1940 [Appellant's] fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the War effort" (Report of Division 4, Sheets 3-4). In its motion to affirm, the Government recognizes that the decision of the court below can be sustained only if the District Court was correct in holding that Appellant forfeited its "grandfather" rights by employing its facilities after January 1, 1940, in exempt transportation which was essential war work.

Appellant submits that the Commission itself has repeatedly held in construing Section 309(a) of the Act that a carrier does not forfeit "grandfather" rights by diverting its fleet from its normal service to essential war work. Interpreting Section 309(a) of the Act, the Commission has stated that the dedication of a carrier's fleet to essential war work should be regarded "in the interest of national defense" (*American-Hawaiian S. S. Co.*, 250 I. C. C. 219, 222), as an interruption in service beyond the carrier's control within the meaning of the proviso in the "grandfather" clause of the Act.[3]

In the *American-Hawaiian* case, the Commission squarely ruled that a diversion of a carrier's vessels from its normal routes to another service in order to conform to a mere *request* of the Maritime Commission was not a "voluntary" diversion that should work a forfeiture of its "grandfather" rights. In that case, the carrier had withdrawn its vessels from serving thirty-six ports as to which it claimed "grandfather" rights in order to place them in a service deemed essential to national defense. If the *American-Hawaiian* decision is to be distinguished from the instant case, the distinction can be made only on the ground that there the Maritime Commission had requested the change in the carrier's service. Unless, however, judicial notice is taken of the Government's power to enforce such a "request" by requisition of the carrier's vessels in the event of a refusal to comply, the car-

[3] See, also, *United States Lines*, 250 I. C. C. 229, 233; and *Sudden & Christenson*, 250 I. C. C. 419, 422.

rier's compliance with the request must be viewed as voluntary. But if judicial notice of the Government's requisition power may properly be taken (see Section 902 of the Merchant Marine Act of 1936, as amended), then the *American-Hawaiian* case is indistinguishable in principle from the present case.

Appellant contended further, as the evidence clearly demonstrates, that the War completely dislocated the normal flow of traffic; that wartime transportation exigencies channeled domestic water-borne traffic into a relatively few routes, concentrating such traffic in a few strategic localities. A consequence of these wartime conditions was that the flow of traffic in and out of the Port of New York swelled to gigantic proportions, a condition which brought about the intensive utilization in New York Harbor of every available lighter and scow. Appellant emphasized before the Commission and the court below that aside from economic forces generated by the War, Appellant diverted its fleet to New York Harbor because it realized that the Government would have forced it to take such action through its power of requisition, had Appellant not anticipated coercive measures. For these reasons, Appellant contended that the Commission erred in concluding that Appellant's action in confining its service to New York Harbor was voluntary. Lastly, Appellant pointed out to the Commission and the court below that the deployment of its fleet in New York Harbor for the duration of the War was a temporary expedient and that evidence that Appellant intended to abandon permanently its normal routes was wholly lacking. A long line of Commission and judicial deci-

sions has held in construing the "grandfather" clause of the Act that an interruption of service warranting a forfeiture of "grandfather" rights must be of such a nature as to justify an inference of abandonment. (Cf. *Transamerican Freight Lines, Inc.* v. *United States*, 51 F. Supp. 405, 411 (D. C. D. Del.)) Illustrative of the Commission's interpretation of the proviso in the "grandfather" clause of the Act is its decision in *Matter of Carpenter*, 32 M. C. C. 580, 582, the relevant portion of which is set out in the margin.[4]

---

[4] "Some time during 1937 the shipper for whom applicant had been transporting beer from Newark lost the agency. The brewery which previously had been the source of supply opened its own distribution agency at Providence, and has since transported its products to Providence in its own vehicles. While no specific date is indicated as to when the transportation from New York and West Haven was discontinued, it is admitted that no transportation has been performed from these points since 1937. Applicant has solicited shippers at various times, but without success. He contends that the cessation is one over which he has no control, and that he is ready and willing to resume this operation if and when he is able to obtain the traffic. The sole question here is whether applicant's present situation is the result of some act or omission within his control. Certainly he cannot be held responsible for the change by the shipper in the method and place of its distribution of these malt beverages. Likewise, the theory of cessation of operations within applicant's control cannot, in this case, be supported by the fact that applicant failed to obtain any traffic since this change in 1937. Nothing that applicant has done suggests, even remotely, that there was any desire or intention to abandon service. On the contrary, his acts show beyond doubt that he held himself ready, able and willing to conduct transportation and we think were sufficient, in these circumstances, to satisfy the continuity of service requirements of the statute. To hold otherwise would result in situations, in cases like this, where through no fault of its own a carrier may be left with its investment, but

(Footnote continued on page 9)

In arguing that the diversion of Appellant's fleet to essential war work constituted a voluntary abandonment of its normal service, the Government places chief reliance upon the decision of this Court in *Gregg Cartage Company* v. *United States*, 316 U. S. 74. The *Gregg* decision is clearly distinguishable on its facts from the instant case. The holding in the *Gregg Cartage* case (316 U. S. 74) that a cessation in service following bankruptcy was within the carrier's control must be read in the light of the fact that the carrier resorted to a "friendly receivership in the state court" (316 U. S. at 79) which "precipitated the involuntary bankruptcy in the federal courts, which in turn brought operations to a halt". (*id.*). Thus, the cessation was due to the voluntary action of the carrier in arranging for the "friendly receivership" in the state court.[5]

(Footnote continued from page 8)
with no possibility of putting it to use should the traffic return or new similar traffic develop. We conclude that applicant is entitled to 'grandfather' authority, which would permit continuing the operations in question." *Carpenter*, 32 M. C. C. 580. See also *Larson*, 20 M. C. C. 644; *Johnson*, 10 M. C. C. 495; *Perkins*, 10 M. C. C. 507; *Brown & McCoocy, Inc.*, 18 M. C. C. 503, 505; *L. & L. Freight Lines, Inc.*, 2 M. C. C. 9, 10; *Kelly*, 18 M. C. C. 706; *Fitzgerald's Exp.*, 6 M. C. C. 499, 500; *Barnes Truck Co. Inc.*, 24 M. C. C. 465, 467; *Hunter Motor Freight, Inc.*, 27 M. C. C. 51, 53, 54.

[5] The Court emphasized this when it pointed out (316 U. S. at 81):

> "When it found itself unable to meet its obligations, Gregg arranged a receivership in the state court, securing the appointment of its own counsel as receiver. Only the one creditor which filed the bill appears to have been consulted. Thus, the petitioner not only arranged deliberately to commit an act of bankruptcy but it managed the affair in a manner not unlikely to provoke the unconsulted creditors to file a petition in bankruptcy * * *."

Plainly, therefore, the *Gregg* decision lends no support to the argument that an interruption of service which was brought about by the exigency of national defense under the shadow of the Government's requisition power constituted a voluntary abandonment of the carrier's normal service so as to work a forfeiture of its "grandfather" rights.

Conclusion

The denial of "grandfather" rights in and of itself lessens substantially the going concern and sale value of Appellant's business. As Judge Douglass pointed out in the *Gregg Cartage* case (316 U. S. at 87): "Operating rights are the very life of any [carrier's] business. Without them this business certainly has no more than scrap value." The issues on this appeal have never to our knowledge been determined by any court other than the court which rendered the judgment from which this appeal is prosecuted, and are of great public concern in that they present questions of large importance in the postwar administration of the "grandfather" clause in Section 309(a) of the Interstate Commerce Act. For these reasons, it is respectfully submitted that the motion to affirm should be denied.

Respectfully submitted,

Krisel & Beck,

By Maurice A. Krisel,

Attorneys for Appellant.

Maurice A. Krisel,

Roman Beck,

Of Counsel.

November, 1945.

APPENDIX

The relevant portion of the Interstate Commerce Act (Section 309(a)) is as follows:

> Except as otherwise provided in this section and Section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* that, subject to section 310, *if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940,* over the route or routes or between the ports with respect to which application is made and *has so operated since that time* (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) *except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control,* the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section, and prior to the expiration of one hundred and twenty days after this section takes effect; (emphasis supplied).

FILE COPY

No. 616

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

McALLISTER LIGHTERAGE LINE, INC., APPELLANT

against

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION,

APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANT

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BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the specially constituted three-judge District Court for the Southern District of New York on final hearing (R. 36-43) is not reported.

JURISDICTION

The final judgment of the District Court was entered on August 9, 1945 (R. 43-44). The petition for appeal

(R. 44) was allowed on October 8, 1945 (R. 45). This Court noted probable jurisdiction on December 10, 1945 (R. 263). The jurisdiction of this Court is invoked under Section 210 of the Judicial Code (38 Stat. 220; 28 U. S. C., Section 47(a)) and Section 238 of the Judicial Code (43 Stat. 938; 28 U. S. C., Section 345).[1]

STATUTE INVOLVED

The relevant portion of Section 309(a) of Part III of the Interstate Commerce Act (54 Stat. 941(a); 49 U. S. C. 909(a) is set forth in the appendix, *infra*, page 25.

QUESTIONS PRESENTED

Appellant, a common carrier by water, sought "grandfather" rights in regard to Atlantic coastwise and tributary, inland routes upon proof that it was in bona fide operation over those routes on and subsequent to January 1, 1940, the "grandfather" date, except for (a) an interruption of service from 1933 through 1939 caused by the general economic depression, and (b) a further interruption from 1940 onward caused by the diversion of its vessels to essential war work within New York Harbor—transportation exempt

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[1] On the basis of these statutory provisions, this Court entertained direct appeals to review final judgments of specially constituted three-judge district courts in *Cornell Steamboat Co.* v. *United States*, 321 U. S. 634; *Alton R. Co.* v. *United States*, 315 U. S. 15, and *Barrett Line, Inc.* v. *United States*, Law ed. Advance Opinions, Vol. 89—No. 17, p. 1405.

from regulation under Part III of the Interstate Commerce Act. The questions presented are:

1. Whether the interruption in appellant's service from 1933 through 1939 caused by the general economic depression was beyond appellant's control, within the intendment of the proviso in the "grandfather" clause.

2. Whether the proceeding should be remanded to the Interstate Commerce Commission because of the Commission's failure to make findings as to the cause for the interruption in appellant's service from 1933 through 1939.

3. Whether, in the circumstances revealed by the record, the diversion of appellant's vessels to essential war work in New York Harbor from 1940 onward was an interruption of service over which appellant had control, within the intendment of the proviso in the "grandfather" clause.

4. Whether the proceeding should be remanded to the Interstate Commerce Commission for findings as to whether the interruption of service mentioned in the preceding question was beyond appellant's control, within the meaning of the "grandfather" clause proviso.

STATEMENT

This is an appeal from a judgment of a District Court, three judges sitting, convoked under the Urgent Deficiencies Act [(October 22, 1913) 38 Stat. 208, 220, c. 32, 28 U. S. C. A. Sec. 47, 7 F. C. A., Title 28, Sec. 47],

dismissing the petition of McAllister Lighterage Line, Inc., the appellant herein, to set aside an order of the Interstate Commerce Commission.

The Commission's order denied appellant's application for a certificate to engage in transportation of general commodities by water as a common carrier. The application was predicated on Section 309(a), the so-called "grandfather" clause, of Part III of the Interstate Commerce Act [54 Stat. 941; 49 U. S. C. A., 909(a); 10A. F. C. A., tit. 49, Sec. 909(a)]. The authority sought was to continue a transportation service by tug and barge which appellant had performed over routes along the Atlantic seaboard and tributary, inland waterways.[2]

The burden rested upon appellant of demonstrating that it or its predecessor in interest "was in bona fide operation as a common carrier by water on January 1, 1940 * * *-and [that appellant] * * * has so operated since that time * * * except * * * as to interruptions of service over which the applicant or its predecessor in interest had no control" [Sec. 309(a) of Part III of the Interstate Commerce Act]. To sustain its burden, appellant adduced evidence, in no way contro-

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[2] No question of procedure is presented on this appeal. The order, sustained by the court below, followed the usual proceedings before the Interstate Commerce Commission, including a hearing before an Examiner, an Examiner's report, exceptions to that report, the Report and Order of Division 4 of the Commission which denied the application, and an Order of the full Commission which denied appellant's petition for reconsideration (R. 53-261).

verted, before the Commission which revealed that until 1933 it had performed a freighting service by tug and barge adequate to entitle it to a common carrier certificate if such service had continued to January 1, 1940, the "grandfather" date, and uninterruptedly thereafter. The evidence relating to this service is hereinafter set forth, pages 12-13 *infra*. Appellant conceded before the Commission that from 1933 through 1939 its freighting operations had virtually ceased, but contended that it had bent every effort during those years to obtain traffic and that the paucity of its operations resulted solely from the severe economic depression which prevailed during that period; hence, appellant contended that the interruption in its service prior to January 1, 1940, was beyond its control, within the meaning of the proviso in the "grandfather" clause of the Act. Appellant substantiated this contention by uncontradicted and in part disinterested testimony (R. 141-144; 156-157, 158) but, as we hereinafter point out, pages 15-16 *infra*, the Commission omitted findings on this critical aspect of the case, even though appellant called the omission to the Commission's attention in its petition for reconsideration (R. 253-254, 256-258).

By 1940 the stagnant business conditions which had prevailed during the depression years gave way to the acute demand for shipping created by World War II (R. 155-156). In response to this demand, appellant, as the Commission found (R. 21), dedicated its fleet to "the performance in New York Harbor of lighterage and other work essential to the war effort." Appellant contended before the Commission, as the Commission's

decision makes clear (R. 21), that the employment of its vessels since 1940 in essential war work was not an interruption in service such as to work a forfeiture of its "grandfather" rights, and argued before the Commission that if its response to war traffic demands could be considered an interruption in service that such interruption was beyond appellant's control when viewed in the setting of the Government's war controls of shipping. The Commission's only reference to these contentions, in spite of its explicit fact finding that appellant had dedicated its fleet to essential war work since 1940, was the statement that appellant was not "holding itself out at the present time to perform" the service in respect of which it was seeking "grandfather" rights, and that appellant had "considerable facilities available at the present time, the use of which it voluntary has confined to exempt transportation within the limits of New York Harbor" (R. 21).

The court below recognized the merit in appellant's contention that the Commission had omitted findings concerning the reasons for the paucity in appellant's operations during the depression years. The court below stated in this regard:

> "It is true that the Commission did not make a definite finding that the interruption in service before January 1, 1940, either was or was not beyond the control of petitioner and its predecessors and if decision were wholly dependent upon the fact as to that matter the petitioner would have substantial ground for insisting that the cause be remanded to the Commission for a finding on that point" (R. 41).

The court below sustained the Commission's order, however, saying:

> "Decision, however, does not depend entirely upon what the petitioner or its predecessors did or failed to do on or before January 1, 1940. The statute requires as a condition precedent to the granting of a 'grandfather' certificate, where proof is not made of bona fide operation on January 1, 1940, and since that date, a showing that the interruption of service on and after the critical date was for causes not within the control of the petitioner or its predecessors. There was no proof whatever of subsequent operation and the Commission found both that the applicant 'is not holding itself out at the present time to perform such transportation' and that it 'has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor.' This makes unimportant any deficiency in the findings as to the interruption of service before January 1, 1940. We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control" (R. 42).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In not holding that, within the intendment of Section 309(a) of the Interstate Commerce Act, ap-

pellant was in bona fide operation as a common carrier by water on January 1, 1940, and continuously thereafter, except as to interruptions of service over which appellant and its predecessors in interest had no control.

2. In not holding that in the circumstances revealed by the record the paucity of appellant's operations during the depression period from 1933 through 1939 did not constitute an abandonment of the service on which appellant predicates its "grandfather" rights under Section 309(a) of the Interstate Commerce Act.

3. In not remanding the proceeding to the Interstate Commerce Commission for appropriate findings as to the cause of the paucity in appellant's operations during the depression period from 1933 through 1939, and as to whether such cause constituted an interruption in service over which appellant and its predecessors in interest had control within the meaning of Section 309(a) of the Interstate Commerce Act.

4. In not holding that the paucity of appellant's operations during the period from 1933 through 1939 was an interruption in service beyond appellant's control within the meaning of Section 309(a) of the Interstate Commerce Act.

5. In holding that appellant's action in confining its service to essential war work within New York Harbor, effective at the time of the hearing before the Commission, constitutes an interruption in service over which appellant had control, within the meaning of Section 309(a) of the Interstate Commerce Act.

6. In holding that the dedication by appellant of its fleet to the performance of essential war work within the limits of New York Harbor was "voluntary," that is, within appellant's control.

7. In failing to remand the proceeding to the Interstate Commerce Commission for the purpose of having the Commission make explicit findings as to whether the dedication by appellant of its fleet to essential war work within New York Harbor, constituted an interruption in service within appellant's control.

8. In dismissing appellant's petition to set aside the Interstate Commerce Commission's orders.

SUMMARY OF ARGUMENT

Section 309(a) of Part III of the Interstate Commerce Act, herein called the "grandfather" clause, directs the Interstate Commerce Commission to grant a certificate to a common carrier by water without requiring proof of public convenience and necessity if the carrier "was in bona fide operation * * * on January 1, 1940, * * * and has so operated since that time * * * except * * * as to interruptions of service over which the applicant or its predecessor in interest had no control."

Appellant or its predecessors have been engaged in marine transportation since 1864; the business has been conducted continuously by its founder and his descendants through four generations; its activities have been extensive, varied, and at one time worldwide. Prior to 1933, appellant conducted a substantial freighting service as a common carrier by tug and

barge along the Atlantic coast and inland, tributary waters. From 1933 through 1939, the economic depression forced appellant to lay up almost its entire fleet of more than 100 vessels because of a dearth of traffic. From 1940 onward, appellant's fleet has been confined to essential war work in the New York Harbor area.

Without discussing appellant's contentions concerning the causes for the interruptions in its service, the Commission denied the application. The court below, conceding the deficiency in the findings as to the interruption before 1940, sustained the denial of the application because it held that the Commission had found by implication that the dedication of appellant's fleet to essential war work since 1940 was an interruption over which appellant had control.

The evidence before the Commission required a finding that the interruption of service before 1940 was caused entirely by the economic depression. Such an interruption is plainly beyond a carrier's control. Many decisions of the Commission have recognized that the controlling question under the statute is whether or not the carrier was itself responsible for the cessation in service. The proceeding should be remanded for appropriate findings on this aspect of the case.

In other cases, the Commission properly construed the "grandfather" clause by holding that, in the interest of national defense, an interruption of service caused by diversion of a carrier's fleet to war work does not work a forfeiture of "grandfather" rights.

The Commission's findings that since January 1, 1940, appellant has employed its vessels in "lighterage and other work essential to the war effort" (R. 21) entitled appellant to an ultimate finding that the change to war work since 1940 was not an interruption of service, within the meaning of the Act. Moreover, the Government's war time controls over shipping had, as the record shows, confined barge movements along the Atlantic coast almost entirely to the transportation of coal. Had appellant attempted to divert its fleet from New York Harbor where the national interest required its intensive utilization, the Government would unquestionably have requisitioned appellant's vessels. Hence, the diversion of appellant's fleet to war work was not within its control, and the Commission should have so found. Finally, the court below invaded the administrative province by holding that implicit in the Commission's subsidiary findings was a basic finding that the diversion to war work was an interruption within appellant's control.

ARGUMENT

Point I

APPELLANT WAS IN BONA FIDE OPERATION AS A COMMON CARRIER BY WATER OVER THE ROUTES AS TO WHICH IT APPLIED FOR OPERATING AUTHORITY ON JANUARY 1, 1940, AND CONTINUOUSLY SINCE, EXCEPT FOR INTERRUPTIONS IN SERVICE BEYOND ITS CONTROL

Appellant or its predecessors (hereinafter at times referred to jointly as "appellant") have been engaged in marine transportation since 1864; the business has been continuously owned by its founder or his descen-

dants through four generations (R. 20; 147-148).[3] In the past, appellant's business activities have been varied, extensive, and at one time were worldwide (R. 20; 152-153). At the time of the hearing before the Commission, appellant either owned or had under charter 101 units of floating equipment (R. 20; 148-149; Exhibit 6, R. 197-201).

In part substantiation of its position that it was in bona fide operation on and subsequent to January 1, 1940, the "grandfather" date, but for interruptions beyond its control, as a common carrier by water over routes along the Atlantic seaboard and inland, tributary waters, appellant put in evidence Exhibit 12 (R. 209-214). This Exhibit sets forth in detail the freighting operations which appellant performed from January 1, 1931, through December 31, 1932, as well as subsequently. As a point of departure for the argument that follows, we summarize the contents of Exhibit 12 for the two-year period just mentioned.

Freighting Operations by Tug and Barge

From January 1, 1931, through December 31, 1932, appellant transported by tug and barge a wide variety of commodities. It carried boilers, oil in cans and cases, machinery, paper in bales, sugar in bags, Hessian-cloth rags in bales, a clam shell bucket, lumber, kerosene in cases, assorted freight such as coffee and pepper in bags, prassava, construction fill, palm oil in cans and

[3] References preceding semicolons are to the Commission's findings; succeeding references are to the evidence.

cases, paraffin wax in bags and cases, germ copal, goat and sheep skins in bales, grape seed oil in cans, pyretheum flowers in barrels, and porcelain in crates.

Between January 1, 1931, and December 31, 1932, petitioner served the following ports:

NEW YORK STATE

New Rochelle, Davids' Island, Brooklyn, Roslyn, L. I., Long Island City and Staten Island.

NEW JERSEY

Paulsboro, Greenville, Delair, Point Breeze, Hoboken, Bayonne, Constable Hook, New Brunswick, Brown Hook, Princeton, Trenton, Bordentown, Jersey City and Weehawken.

PENNSYLVANIA

Philadelphia and South Philadelphia.

MARYLAND

Baltimore.[4]

From 1933 through 1939, with the exception of 1937, in which year appellant transported machinery, airplanes, guns and parts over portions of its routes, appellant's freighting operations were confined, as the Commission found, "primarily to the New York Harbor

[4] The Commission's findings do not fully describe appellant's freighting operations through 1932. A detailed discussion of appellant's freighting service through 1932 is unnecessary, however, since the Commission's decision does not question the adequacy of appellant's freighting service through 1932.

area" (R. 20-21; Exhibit 12). Appellant contended before the Commission that the paucity of its freighting operations from 1933 through 1939 was the result of circumstances beyond its control. In proof of this contention, appellant introduced evidence, in no way challenged, which was in part given by a disinterested witness of recognized standing as an expert in marine transportation (R. 141-142), that the general economic depression during the years 1933 through 1939 had so severe an impact upon shipping in the coastwise region serviced by appellant as to compel every carrier having a substantial fleet to lay up large numbers of its vessels for want of traffic (R. 143-144; 156-158). Appellant's vice president (R. 145) testified that in those years the economic depression deprived appellant of traffic to such an extent that at one point it was forced to lay up all but one tug and a few barges of its fleet of over a hundred vessels (R. 156). The Commission's Examiners found that appellant's operations were reduced at times because of the depression "to one or two tugs and a few inland scows and lighters" (R. 228). The Commission made no findings whatever on this aspect of the case, contenting itself with a mere recital of appellant's contention (R. 21).

A. *The paucity of Appellant's Operations From 1933 Through 1939 Resulted From a General Economic Depression Beyond Appellant's Control; Hence the Interruption in Service During the Depression Did Not Work a Forfeiture of Appellant's "Grandfather" Rights*

The Commission, without discussing the reason for appellant's reduced operations during the depression period, dismissed appellant's contention by saying: "Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since" (R. 21).

Because of the Commission's silence, one cannot say from reading its decision whether or not it is in accord with its Examiners' finding that the interruption in appellant's service during the years 1933 through 1939 resulted from the economic depression. Nor can one tell whether the Commission regards an interruption from such cause as beyond a carrier's control, within the intendment of the proviso to Section 309(a) of the Act. In view of the evidence previously mentioned and of appellant's clearly presented contention, the Commission was plainly obligated to make appropriate findings on this aspect of the case. As this Court has observed: "The administrative process will best be vindicated by clarity in its exercise." *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 197.[5] The court

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[5] Cf. *Eastern-Central Motor Carriers Association* v. *United States*, 321 U. S. 194, 211-212; *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, 489; *Howard Hall Co., Inc.* v. *United States*, 315 U. S. 495, 499; *United States* v. *B. & O. R. R. Co.*, 293 U. S. 454, 464.

below, as has been stated, page 6, *supra*, acknowledged the inadequacy of the Commission's findings on the cause for the interruption in service from 1933 through 1939. Manifestly, the proceeding should be remanded to the Commission for clarifying findings. The facts on which appellant's contention in regard to the interruption of service from 1933 to 1940 rest are clearly borne out by the evidence previously mentioned, by the Examiners' findings quoted above, and by the logic of the situation. From 1933 to 1940, appellant had a large fleet representing a tremendous investment. To indulge in the assumption that the Commission's silence is tantamount to a reversal of its Examiners' findings as to the severity of the impact upon appellant's business of the depression, is to affirm the extravagant notion that appellant deliberately kept the major part of its vessels idle over a period of years when employment for them was available.

If the facts are found in favor of appellant's contentions, the sole question that remains is whether the interruption was beyond appellant's control within the meaning of the Act. The answer to that question must be in the affirmative. For, the Commission's own decisions on "grandfather" applications recognize that an interruption of service stemming from a lack of traffic is beyond a carrier's control within the intendment of the Act. See *Carpenter*, 32 M. C. C. 580, 582; *Larson*, 20 M. C. C. 644; *Johnson*, 10 M. C. C. 495; *Perkins*, 10 M. C. C. 507; *Brown & McCooey, Inc.*, 18 M. C. C. 503, 505; *L. & L. Freight Lines, Inc.*, 2 M. C. C. 9, 10; *Kelly*, 18 M. C. C. 706; *Fitzgerald's Exp.*, 6 M. C. C. 499, 500;

Barnes Truck Co., Inc., 24 M. C. C. 465, 467; *Hunter Motor Freight, Inc*, 27 M. C. C. 51, 53, 54.

A clear application of the Commission's interpretation of the proviso in the "grandfather" clause is found in the *Carpenter* decision, the relevant portion of which is set out in the margin.[6]

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[6] "Some time during 1937 the shipper for whom applicant had been transporting beer from Newark lost the agency. The brewery which previously had been the source of supply opened its own distribution agency at Providence, and has since transported its products to Providence in its own vehicles. While no specific date is indicated as to when the transportation from New York and West Haven was discontinued, it is admitted that no transportation has been performed from these points since 1937. Applicant has solicited shippers at various times, but without success. He contends that the cessation is one over which he has no control, and that he is ready and willing to resume this operation if and when he is able to obtain the traffic. The sole question here is whether applicant's present situation is the result of some act or omission within his control. Certainly he cannot be held responsible for the change by the shipper in the method and place of its distribution of these malt beverages. Likewise, the theory of cessation of operations within applicant's control cannot, in this case, be supported by the fact that applicant failed to obtain any traffic since this change in 1937. Nothing that applicant has done suggests, even remotely, that there was any desire or intention to abandon service. On the contrary, his acts show beyond doubt that he held himself ready, able and willing to conduct transportation and we think were sufficient, in these circumstances, to satisfy the continuity of service requirements of the statute. To hold otherwise would result in situations, in cases like this, where through no fault of its own a carrier may be left with its investment, but with no possibility of putting it to use should the traffic return or new similar traffic develop. We conclude that applicant is entitled to 'grandfather' authority, which would permit continuing the operations in question." *Carpenter*, 32 M. C. C. 580.

In the court below, counsel for the Government argued that an interruption of service caused by economic depression is not beyond the control of a carrier, within the meaning of the proviso in the "grandfather" clause. In support of this argument, the Government relied upon the *Gregg Cartage* case (316 U. S. 74), in which this Court held that bankruptcy of the carrier was not, under the circumstances revealed by the record, a cause beyond the carrier's control. But the holding in the *Gregg Cartage* case must be read in the light of the fact that the carrier resorted to a "friendly receivership in the state court" (316 U. S. at 79) which "precipitated the involuntary bankruptcy in the Federal court, which in turn brought operations to a halt" (*id.*). Thus, the cessation was due to voluntary action of the carrier in arranging for a "friendly receivership" in the state court.[7]

B. *The Commission's Conclusion, Sustained by the Court Below, That Appellant Is Not Holding Itself Out At the Present Time to Perform the Service for which It Seeks "Grandfather"*

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[7] The Court emphasized this when it pointed out (316 U. S. at 81):

> "When it found itself unable to meet its obligations, Gregg arranged a receivership in the state court, securing the appointment of its own counsel as receiver. Only the one creditor which filed the bill appears to have been consulted. Thus, the petitioner not only arranged deliberately to commit an act of bankruptcy but it managed the affair in a manner not unlikely to provoke the unconsulted creditors to file a petition in bankruptcy. * * *."

Rights Because, Assertedly, It Has "Voluntarily" Confined Itself to Exempt Transportation Within New York Harbor Proceeds On A Mistaken Interpretation of the Act, in View of the Commission's Finding That "Since January 1, 1940, Applicant's Fleet Has Been Engaged Almost Exclusively Within New York Harbor in the Performance of Lighterage and Other Work, Essential to the War Effort" (R. 21)

The fallacy that inheres in the conclusion that appellant should forfeit its "grandfather" rights because it placed its facilities in essential war work exempt from regulation under the Act is apparent from the Commission's own decisions which recognize that the dedication of a carrier's fleet to essential war work should, "in the interest of national defense" (*American-Hawaiian S.S. Co.*, 250 I. C. C. 219, 222), be regarded as an interruption in service beyond the carrier's control within the meaning of the proviso in the "grandfather" clause of the Act. In the *American-Hawaiian* case, the carrier had, at the request of the Maritime Commission, withdrawn its vessels from serving 36 ports as to which it claimed "grandfather" rights, in order to place them in a service essential to national defense.[8]

Here, appellant did not wait for a request but placed its entire fleet in a critical sphere of wartime shipping, namely the lighterage of war cargoes and the docking

[8] See, also, *United States Lines*, 250 I. C. C. 229, 233; and *Sudden & Christenson*, 250 I. C. C. 419, 422.

and undocking of steamers in the Port of New York. If the *American-Hawaiian* decision is to be distinguished, the distinction can be made only on the ground that there the Maritime Commission requested the change in the carrier's service. Unless, however, judicial notice is taken of the Government's power to enforce such a "request" by requisition of the carrier's vessels the carrier's compliance with the request must be viewed as voluntary. But if judicial notice of the Government's requisition power may properly be taken (see Section 902 of the Merchant Marine Act of 1936, as amended), then the *American-Hawaiian* case is indistinguishable in principle from the present case.

In order to understand the reasons which impelled the Commission to hold that a diversion of a carrier's vessels to war work is not an interruption of service within the carrier's control, one must have in mind the profound changes in domestic water-borne traffic which the War brought about. The instant application concerns a tug and barge freighting service along a coastwise route. The Commission in *Administrator, WSA, Temporary Authority Application (Coastwise and Intercoastal); No. W-926*, 5 Federal Carriers Cases, par. 31,001, pointed out that there was a "withdrawal of most coastwise and intercoastal water service" during the War. In order to assure the most effective utilization of the shipping of the United States for the successful prosecution of the War, the Government exerted control over all domestic shipping (R. 123). The Office of Defense Transportation, for example, by virtue of its powers under Presidential Executive

Order No. 8989, confined barge movements along the Atlantic coast almost exclusively to the movement of coal (R. 174-175). It is common knowledge, moreover, that the flow of traffic in and out of New York Harbor swelled to gigantic proportions during the War, a condition which necessitated intensive utilization of every available tug, barge, lighter, and scow in the movement of war cargoes. Had appellant attempted to utilize a substantial portion of its fleet in its freighting service along the Atlantic coast, there is not the slightest doubt that the Office of Defense Transportation would have frustrated such attempt, and if necessary, would have requested the War Shipping Administration to requisition appellant's vessels. The court below dismissed this argument by stating that whether or not such an attempt would have been prevented by the Government lay "in the realm of pure speculation" (R. 42).

Appraising appellant's contention thus lightly, the court below, in the guise of interpreting the Commission's subsidiary findings, itself supplied a basic finding which the Commission had failed to make. The Commission, as has been noted, did not discuss appellant's contention that the dedication of its fleet since 1940 to essential war work in New York Harbor was not an interruption of service such as to forfeit "grandfather" rights. The Commission found that appellant was not "holding itself out" at the time of the hearing to perform the service in respect of which it sought a "grandfather" certificate and that appellant had considerable facilities "the use of which it

voluntarily has confined to exempt transportation within the limits of New York Harbor" (R. 21). In sole reliance upon these subsidiary findings, the court below declared: "We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control" (R. 42). The Court's action in this respect disregards, we believe, the settled rule that a reviewing court should not supply basic findings by inference or implication. *Wichita R. & Light Co.* v. *Public Utilities Commission*, 260 U. S. 48, 58-59; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 433; *Atchison, Topeka & Santa Fe R. Co.* v. *United States*, 295 U. S. 193, 201-202. In the *Atchison* case, this Court declared that it would "not search the record to ascertain whether, by use of what there may be found, general and ambiguous statements in the report intended to serve as findings may by construction be given a meaning sufficiently definite and certain to constitute a valid basis for the order."

In the present case it is doubtful whether the Commission would have made the basic finding that the court supplied. The doubt on this score arises from the fact that the Commission has repeatedly, and so far as we know, consistently held that a carrier does not forfeit its "grandfather" rights by diverting its vessels to war service (*supra*, p. 19). As the Commission's decision in the *American Hawaiian* case, page 19, *supra*, makes clear, the Commission did not think that Congress intended to deprive a carrier of

"grandfather" rights if the carrier diverted his fleet to essential war work. Such a diversion is necessarily temporary, since it must end with the war. Moreover, it is unthinkable that Congress should have intended a forfeiture of valuable rights as the consequence of action designed to implement successful prosecution of the war.

By omitting to answer appellant's contention, the Commission has avoided its responsibility of clearly indicating the reasons for denying the application. The limited scope of judicial review in a case like this argues strongly for a reviewing court's insisting that the administrative body "disclose the basis of its order" by adequate findings. *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. at 197. In the light of the foregoing, the instant case is an apt illustration of the wisdom of the rule that bars a reviewing court from supplying basic administrative findings by inference or implication.

Appellant has operated and now operates over 100 vessels of all descriptions, capable of serving both on the high seas and on inland waterways. It is a family corporation the founder of which goes back four generations, and whose investment, as of July 31, 1943, was over a million dollars (R. 223). To deny such a carrier a certificate is not consistent with the public policy declared in the Act and destroys its postwar competitive position, achieved over many years.

In *U. S.* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, the Court had before it a "grandfather"

case under the Motor Carrier Act (Part II of the Interstate Commerce Act). The Court said:

> "This Act should be liberally construed to preserve the position which those like (applicant) have struggled to obtain in our national transportation system."

And Mr. Justice DOUGLAS observed in the *Gregg Cartage* case (316 U. S. 74, 87):

> "Congress has provided that those who obtained a position in the competitive transportation system should be allowed to retain the fruits of their struggle. * * * We should not permit those statutory grants to be whittled away on the basis of technical and legalistic grounds which find no expression in the statute however much the administrative chore may be alleviated."

CONCLUSION

The judgment under review should be reversed and the proceeding remanded to the Commission with directions to grant an appropriate certificate or to clarify its findings so as to indicate the basis for denying the application.

Respectfully submitted,

MAURICE A. KRISEL,
ROMAN BECK,
Attorneys for Appellant.

APPENDIX

The relevant portion of the Interstate Commerce Act (Section 309(a)) is as follows:

> Except as otherwise provided in this section and Section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however*, that, subject to section 310, *if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940*, over the route or routes or between the ports with respect to which application is made and *has so operated since that time* (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) *except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control*, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section, and prior to the expiration of one hundred and twenty days after this section takes effect; (emphasis supplied).

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CHARLES ELMORE CROPLEY

No. 616

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

McALLISTER LIGHTERAGE LINE, INC., APPELLANT

against

UNITED STATES OF AMERICA,

and

INTERSTATE COMMERCE COMMISSION,

APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR THE APPELLANT

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---

1. *The Government's summary of the evidence omits reference to the most essential facts.*—To prevent confusion, we desire to note an important omission in the Government's summary of the facts. The Government's brief, pages 4-8, in summarizing the evidentiary facts, omits entirely reference to the freighting operations of appellant with respect to which "grandfather" rights are sought. The evidence concerning these operations is summarized in our main brief, pages 12-14. The Commission did not fully describe the territorial scope of these freighting operations, but explicitly found: "Between 1931 and 1933 a

freight packet line was operated between New York and Philadelphia, Pennsylvania. This service was performed with barges propelled by a tug and a general line of commodities was carried" (R. 20). There is nothing in the Commission's decision, it should be emphasized, which lends support to the view that appellant's freighting service through 1932 was inadequate to sustain its claim to "grandfather" rights, if that service had continued to and after January 1, 1940.

2. *There is no merit in the contention that the "grandfather" clause proviso relates only to the requirement of service continuity since the "grandfather" date.*—For the first time in the course of this proceeding, appellant advances the argument (Government's Brief, pp. 15-16) that an interruption of service *prior* to the "grandfather" date is fatal, even though beyond an applicant's control. This contention is based upon the assertion that the "grandfather" proviso relates only to interruptions occurring after the "grandfather" date. Neither the Commission nor the court below took that position. Indeed, the court below impliedly rejected the construction of the "grandfather" proviso for which Government counsel contend by indicating (R. 41-42) that a remand would be appropriate in regard to the interruption of service *before* January 1, 1940, if the Commission's determination had not, in its view, been supported by another ground which the court deemed unassailable.

The interpretation of the proviso urged by Government counsel is contrary to the words of the statute.

The proviso requires an applicant for "grandfather" rights to show that he was "in bona fide operation * * * on January 1, 1940, * * * *and* has so operated since that time * * * *except, in either event, as to interruptions of service over which the applicant * * * had no control,* * * *" (49 U. S. C. 909(a); emphasis supplied). The prepositional phrase italicized above, beginning with the word "except," modifies not only the immediately preceding phrase, "has so operated since that time," but also the conjoined phrase, "was in bona fide operation * * * on January 1, 1940." The use of the coordinate conjunction "and," as the connective between these two phrases makes this clear. Thus, the canons of usage as well as the natural sense of the words negative the interpretation contended for by Government counsel, even if one accepts their suggestion that the phrase, "in either event," has reference to year-round and seasonal operators rather than to the operating status of an applicant on January 1, 1940, and since that date. But the enclosure in parentheses of the reference in the proviso to seasonal operators indicates, that "in either event," refers to the applicant's operating status on January 1, 1940, as the first "event" and to his subsequent operating status as the second "event."

If, moreover, the words of the proviso were less plain than they are, its purpose would militate against the interpretation for which Government counsel argue. As was pointed out in *Alton R. Co.* v. *United States*, 315 U. S. 15, 22, the purpose of Congress in enacting the proviso was to protect carriers already established by assuring them "substantial parity be-

tween future operations and prior bona fide operations * * *." The considerations of fairness that impelled Congress to immunize interruptions of service beyond a carrier's control occurring after January 1, 1940, apply with equal cogency to those occurring before that date. In support of the construction for which Government counsel argue, they cite in note "7," page 16, of their brief, five decisions involving motor carrier applications. In only one of these cases, however, was the "grandfather" proviso involved. We refer to *Gregg Cartage Co.* v. *United States*, 316 U. S. 74, in which the Court's decision turned on whether bankruptcy *subsequent to the "grandfather" date* was an interruption over which the applicant had control. Manifestly, these decisions do not support the contention that the proviso immunizes only interruptions occurring after January 1, 1940.

3. *The "grandfather" clause requires the Commission, in determining whether an applicant was in bona fide operation on the "grandfather" date, to appraise the applicant's operating history for a reasonable period before that date; and the freighting service here involved was not too remote for consideration under that rule.*—The Government concedes (Brief, p. 14), that the Commission must consider operations for "a reasonable period before January 1, 1940," in determining whether an applicant was in bona fide operation on the "grandfather" date. But the Government argues (Brief, p. 15) that the suspension of appellant's regular service from 1933 compelled the Commission to disregard the 1932 operations as being too remote. A recent decision, not yet reported,

of the Commission, Division 4, in *Chatin and Pharr, Inc.*, W-115, decided January 11, 1946, granted a "grandfather" certificate even though, as Commissioner Miller noted in his dissenting opinion, "the fact is that [the applicant] performed but a single instance of transportation subject to the Act during the 11-year period from 1929 to January 1, 1940, and only three instances of such transportation since that date." If this 11-year hiatus was not deemed a fatal break in service continuity, on what rational basis can Government counsel contend that the much shorter hiatus here involved is too "remote" (R. 21).

4. *The Commission's omission to make findings concerning the interruption of service before the "grandfather" date is not immaterial as a matter of law.*—The Government (Brief, pp. 17-21) attempts to counter the Commission's omission to find the facts concerning the cause for the interruption in appellant's service during the economic depression, that is prior to January 1, 1940, by contending that the omission is immaterial as a matter of law. This contention rests upon the argument that the failure of a carrier to obtain traffic which results from a general economic depression must, under the doctrine of the *Gregg Cartage* case (316 U. S. 74), be viewed as an interruption of service within the applicant's control. Although it is reasonable to say, as a majority of this Court held in the *Gregg Cartage* case, that a carrier's bankruptcy is a misfortune stemming from circumstances within his control, it is unreasonable to argue that a carrier has control over the economic life of the entire community, and the Government's attempt to apply the

Gregg rationale to an economic depression proceeds on that patently specious premise. The fundamental cause for the carrier's plight in the *Gregg* case was its error of business judgment in selecting an insurance underwriter. Hence, the cause of the bankruptcy was within the carrier's control. And, since in virtually every business failure inadequacy of business foresight lies at the root of the failure, the Court could reasonably hold, as it did, that scrutiny by the Commission of the particular shortcomings that culminated in the insolvency was not required. Stated otherwise, it may be assumed in this workaday world that a man controls his own business destiny. A general economic depression, on the other hand, is the product of a multiplicity of causes which are rooted in worldwide economic and political conditions. To suggest that a single carrier has it within his power to control such a disaster is, we submit, to forsake all reason. As the Government points out (Brief, p. 17), the Commission has recognized that a drought which destroys a carrier's chief source of business is a cause beyond the carrier's control. There is surely as much reason to regard an economic depression which destroys a carrier's sources of business as such a cause.

In its endeavor to bring the instant case within the *rationale* of the *Gregg Cartage* decision, the Government has subtly distorted the facts of the present case. The distortion occurs at pages 18 through 20 of the Government's brief. The evidence summarized in our main brief, page 14, revealed that the impact of the economic depression upon appellant's sources of traffic was so severe that appellant was compelled to lay

up most of its vessels, a condition which at its worst resulted in the idleness of all but one tug and a few barges of a fleet numbering more than a hundred vessels. The Government's brief distorts these facts by intimating that appellant voluntarily put its vessels to work in New York Harbor when the depression occurred as a measure of "prudent retrenchment of the scope of appellant's water carrier operations" (Government's Brief, pp. 18-19); that appellant as a matter of "business judgment" (*id.* p. 20) sought to mitigate "the effects of a depression by curtailing the geographical area to be served by it (rather than seeking larger volume and lower unit costs by expanding its business and seeking wider markets)" (*id.* p. 20). In short, the Government would have it appear that during the depression appellant voluntarily kept its large fleet *busy* in New York Harbor because to do so was more profitable than to continue operations along its regular coastwise route. The fallacy in the argument lies in its false fact premises. As has just been noted, appellant was not able to keep its fleet employed during the depression; it was in the predicament of being unable, though bending every effort, to obtain traffic in or outside New York Harbor, with the result that most of its boats lay idle.

5. *The employment of appellant's fleet in essential war work was not a suspension of its regular service over which it had control, within the intendment of the "grandfather" proviso.*—The Government argues that appellant voluntarily chose to engage in war work, rather than to perform its regular coastwise freighting service (Government's Brief, pp. 22-

27), from which it contends that it forfeited its "grandfather" rights. In our main brief we pointed out that in *American-Hawaiian S.S. Co., Common Carrier Application*, 250 I. C. C. 219, 222; 3 Federal Carriers Cases, par. 30,223, the Commission held that:

> "Interruptions of service by a water carrier subject to the act, directly resulting from compliance with a request of the Maritime Commission, *in the interest of national defense*, are recognized by us as interruptions in service beyond the control of the carrier. * * *"[1] (Italics supplied.)

The "request" of the Maritime Commission could not have been considered by the Commission an essential factor in its decision. The principle of the decision was that a diversion of a carrier's vessels to essential war service is not an interruption of service that works a forfeiture of "grandfather" rights; a contrary interpretation of the proviso would thwart "the interest of national defense" (the *American-Hawaiian* case, at p. 222), a result manifestly opposed to the Congressional purpose. The only other interpretation of the *American-Hawaiian* opinion is that such a diversion must, in the setting of war-time shipping control, be regarded as an interruption of service beyond an applicant's control. A recent Com-

[1] A similar conclusion was reached in other Commission proceedings. *See Agwilines, Inc., Common Carrier Application*, 250 I. C. C. 339, 345; *Southern Pac. Co., Common Carrier Application*, 250 I. C. C. 457, 461 [3 Federal Carriers Cases par. 30,389]; *California Eastern Line, Inc., Application*, 250 I. C. C. 677, 678 [3 Federal Carriers Cases par. 30,572].

mission decision confirms our understanding of the *American-Hawaiian* doctrine. We refer to *Northland Transportation Co., Common Carrier Application;* No. W-351 (December 21, 1945), 5 Federal Carriers Cases, par. 31,041. In the *Northland* case, it appeared that the applicant withdrew its vessels from their customary intercoastal trade and placed them in foreign trade at a time when the Maritime Commission was attempting, as the applicant knew, to persuade the intercoastal lines through negotations with their shipping associations to divert tonnage to foreign trade. The protestants argued that the interruption was not beyond the control of the Northland Company because, admittedly, the applicant's motive was to take advantage of the more remunerative charter rates afforded by the foreign trade. The protestants argued, further, that the Maritime Commission had not requested or ordered the applicant to engage in the foreign service. In rejecting these contentions, the Commission reviewed the measures which the Government had adopted to control domestic shipping, and pointed out that, "It was made clear [to the intercoastal shipping lines through the Maritime Commission's discussions with their shipping associations], and applicant so understood it, that unless the necessary tonnage of vessels could be obtained by voluntary release, the Government would requisition them" (the *Northland Transportation Co.* decision, 5 Federal Carriers Cases, par. 31,041.03). In view of this, the Commission held that the diversion was beyond the applicant's control, and granted the application.

The parallel between the *Northland* and the instant case, is apparent. Indeed, the public authority which would have been exercised, had the Northland Company not anticipated the necessity for its exercise by voluntarily diverting its vessels to foreign trade, that is, the Government's requisition power, would unquestionably have been employed had appellant not placed its vessels in the essential war service that it did. Furthermore, the argument that appellant could have operated its regular coastwise freighting service is belied by the fact that the Office of Defense Transportation required the owners of barges plying the Atlantic Coast to confine their use to the movement of coal in bulk as a means of freeing railroad equipment that was desperately needed for other purposes (R. 174-175; cf. ODT General Order No. 15, sec. 502-35, which exerted the ODT's control over coastwise vessels as a step in regulating the coal movement). To accomplish this object without causing loss to the coal receivers, the Government through the Reconstruction Finance Corporation subsidized the movement by granting a subvention to compensate for the added transportation cost. Appellant could not, therefore, have carried on its regular freighting service without running counter to the Office of Defense Transportation's known policy and restraining powers.

Respectfully submitted,

MAURICE A. KRISEL,
ROMAN BECK,
Attorneys for Appellant.

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In the Supreme Court of the United States

October Term, 1945

[illegible] Investment Co., Inc., Appellant,

vs.

[illegible] Bureau of Revenue and Commissioner Appellees.

APPEAL FROM THE SUPREME COURT OF THE UNITED STATES FOR THE [illegible] OF NEW YORK

BRIEF FOR APPELLEE

In the District Court of the United States for the Southern District of New York

Civil No. 27–352

McALLISTER LIGHTERAGE LINE, INC., PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS-APPELLEES

MOTION TO AFFIRM

Appellees, United States of America and Interstate Commerce Commission, pursuant to Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States, move that the decree of the District Court be affirmed.

This is a direct appeal from the final decree[1] entered on August 9, 1945, of a specially constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's complaint to set aside an order of the Interstate Commerce Commission. Appeal was allowed on October 8, 1945, and appeal papers[2] were served on October

[1] The Court also rendered an opinion, dated July 16, 1945.

[2] The appeal papers did not include the notice to the Attorney General of the State of New York required by 28 U. S. C. 47a.

15, 1945. The Commission's order, dated February 7, 1944, confirmed the decision of Division 4 of the Commission (issued on July 28, 1942) denying appellant a certificate as a common carrier by water under the "grandfather clause" of Section 309 (a) of Part III of the Interstate Commerce Act, as amended (40 U. S. C. 909 (a)).[3]

Appellees submit that the appeal presents no substantial question, and that the decree of the District Court should be affirmed without argument. The ground upon which the District Court based its decision is conclusive and sufficient to dispose of the case. That ground is lack of continuity of operation following the "grandfather" date of January 1, 1940. A water carrier under Part III of the Act, like motor carriers under Part II, in order to obtain "grandfather" rights, must prove not only that "such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940," but also that such applicant "has so operated since that time" to the date of the Commission's decision on the application, except "as to interruptions of service over which the appel-

[3] Applicant had also originally applied for a permit as a contract carrier, and for a certificate as a common carrier under the public convenience and necessity provisions of Section 309 (c); but the application was amended by eliminating the request for a permit, and the Commission's denial of a certificate under the public convenience and necessity provisions was not challenged or involved in the suit in the District Court.

lant * * * had no control" (sec. 309 (a)). See *United States* v. *Maher*, 307 U. S. 148, 155–156; *Gregg Cartage Company* v. *United States*, 316 U. S. 74, 78; *Turner* v. *United States*, 56 F. Supp. 798 (M. D. N. C.), affirmed, 323 U. S. 674.

The District Court stated its *ratio decidendi* in the following language:

> There was no proof whatever of subsequent [non-exempt] operation [*i. e.*, after the "grandfather" date] and the Commission found both that the applicant "is not holding itself out at the present time to perform such [non-exempt] transportation" and that it "has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor."[4] This makes unimportant any deficiency in the findings as to the interruption of service before January 1, 1940. We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control.

---

[4] Under Section 303 (g), transportation in interstate commerce by water solely within the limits of a single harbor is exempt from regulation under the Act, unless the Commission finds that the national transportation policy requires regulation.

A water carrier's "grandfather" rights (other than chartering) must be based on transportation subject to regulation under the Act. See *The Barrett Line, Inc.* v. *United States*, No. 630 October Term, 1944, decided June 18, 1945, slip op. 11.

The facts found by the Commission with respect to appellant's operation as a water carrier show that appellant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. It is also undisputed that appellant's activities in the past have been varied, extensive, and at one time world-wide in scope.

However, notwithstanding the magnitude of its operations during a past period of its history, it is equally undisputed that since 1933 appellant's operations have been confined primarily to the New York Harbor area. As found by the Commission:

> The evidence of record establishes the fact that applicant for a period of over ten years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to "grandfather" rights.

In the light of these findings, appellees submit that the District Court could with propriety have gone further than it did, and could have upheld the denial of appellant's application upon the ground of remoteness. In *The Barrett Line, Inc.* v. *United States*, No. 630 October Term 1944, decided June 18, 1945, this Court held that past water carrier operations prior to January 1, 1936, might be disregarded as too remote. Consequently, like the Commission, the District Court could have treated appellant's operations prior to 1933 as too remote. Moreover, since it was decided in *Gregg Cartage Company* v. *United States*, 316 U. S. 74, that bankruptcy is not to be deemed an interruption of service over which a carrier has no control, it follows *a fortiori* that appellant's prudent retrenchment of the scope of its water carrier operations following the economic depression of 1930, thus avoiding bankruptcy, should also be regarded as a voluntary course of conduct within appellant's control and accordingly not an "interruption of service over which the applicant * * * had no control" (sec. 309 (a)).

Hence if it were necessary or material for the decision of the case, appellees would argue that it was not necessary for the Commission to decide, as a question of fact, and to make definite findings with regard thereto, whether the lack of service during the period immediately prior to January 1, 1940, was or was not due to an inter-

ruption over which appellant had no control. The District Court, with meticulous caution, observed in this connection that:

> It is true that the Commission did not make a definite finding that the interruption in service before January 1, 1940, either was or was not beyond the control of petitioner and its predecessors, and if decision were wholly dependent upon the fact as to that matter the petitioner would have substantial ground for insisting that the cause be remanded to the Commission for a finding on that point. * * *
>
> Decision, however, does not depend entirely upon what the petitioner or its predecessors did or failed to do on or before January 1, 1940.

The District Court placed its decision upon a wholly unassailable ground, *viz.*, lack of continuity of service following the "grandfather" date of January 1, 1940, with regard to which the findings of fact made by the Commission are definite, specific, and uncontroverted.

It is, therefore, respectfully submitted that the decree of the District Court should be affirmed since the appeal presents no substantial question.

J. Howard McGrath,
J. Howard McGrath,
Solicitor General.

Daniel W. Knowlton,
Daniel W. Knowlton,
Chief Counsel, Interstate Commerce Commission.

October 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 616

MCALLISTER LIGHTERAGE LINE, INC., APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted district court (R. 36–43) is not reported. The report of Division 4 of the Interstate Commerce Commission, dated February 7, 1944 (R. 17–22), and its earlier report, dated July 28, 1942 (R. 13–15), are not reported.

JURISDICTION

The final decree of the three-judge district court was entered on August 9, 1945 (R. 43). The

petition for appeal was presented and allowed on October 8, 1945 (R. 45). The jurisdiction of this Court rests on Section 210 of the Judicial Code, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220 (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. 345). Probable jurisdiction was noted by this Court on December 10, 1945 (R. 263).

QUESTION PRESENTED

Whether the Interstate Commerce Commission committed any error in denying appellant a certificate as a common carrier by water under the "grandfather" clause of Section 309 (a) of Part III of the Interstate Commerce Act.

STATUTE INVOLVED

Section 309 (a) of the Interstate Commerce Act provides in pertinent part:

> Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so

> operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. * * * (49 U. S. C. 909 (a).)

STATEMENT

Appellant's application for a certificate as a common carrier[1] by water under the "grand-

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[1] Appellant's original application was in the alternative, seeking a permit as a contract carrier under Section 309 (f) of the Act, but at the hearing before the Commission the application was amended by eliminating the request for a permit. Appellant also sought a certificate as a common carrier under the "public convenience and necessity" provisions of Section 309 (c) but the Commission's denial of a certificate under that Section was not challenged or involved in the suit in the district court. An application by an affiliated company, McAllister Brothers, Inc., which owns vessels and

father" clause of Section 309 (a) of Part III of the Interstate Commerce Act, as amended, was denied by Division 4 of the Interstate Commerce Commission's order of February 7, 1944 (R. 260), which confirmed and permitted to become effective its previous decision issued on July 28, 1942 (R. 16).

The Commission found that appellant "was not in operation on January 1, 1940, and continuously since as a contract or common carrier by water, in interstate or foreign commerce, in the performance of transportation subject to part III of the act" (R. 15, 22), and the application was accordingly denied.

The evidentiary facts found by the Commission with respect to appellant's operation as a water carrier show that appellant or its predecessors have been engaged in marine transportation since 1864, and the business has been continuously owned by its founder or his descendants through four generations. Appellant's activities in the past have included ocean transportation, harbor towing, freighting, salvaging, fishing, chartering, passenger excursions, and managing or operating for other companies. In the period between 1919 and 1926 appellant operated on

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charters them to appellant, was dismissed upon the ground that no certificate or permit was required to authorize continuance of that business. The dismissal of the application of McAllister Brothers, Inc., was not challenged or involved in the suit in the district court.

behalf of the United States Shipping Board a fleet of 43 tankers to all parts of the world. (R. 20.)

However, notwithstanding the extensive scope of its operations during a past period of its history, appellant's operations since 1933 have been confined to the performance of transportation within the New York Harbor area.[2] In this connection the Commission made the following findings:

> Since 1933 applicant's operations have been confined primarily to the New York Harbor area. Some towing for other carriers and of bulk commodities has been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war

[2] Under Section 303 (g) of the Act, transportation in interstate commerce by water solely within the limits of a single harbor is exempt from regulations under the Act, unless the Commission finds that the national transportation policy requires regulation.

A water carrier's "grandfather" rights (other than chartering) must be based on transportation subject to regulation under the Act. See *Barrett Line* v. *United States*, 326 U.S. 179, 193.

effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.

Applicant contends that the interruption of its service since 1930 was due to the lack of business because of the economic depression, and later because all of its maritime equipment was, and is now, used in essential war work, which causes were beyond its control and must be considered under the mandate of section 309 (a); that at various times during the years of depression its operation was limited to 1 and 2 tugs and a few inland scows and lighters, and that there was no abandonment of its service. Under the provisions of section 309 (a) an applicant, in order to be entitled to "grandfather" rights, must show that it was in bona fide operation on January 1, 1940, and continuously since, except for interruptions of service beyond its control. The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously, the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt trans-

> portation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to "grandfather" rights. (R. 20–21.)

In Exhibit E attached to the application filed May 29, 1941 (R. 55), appellant stated that it performed lighterage operations on all commodities moving within the confines of New York Harbor (R. 65).

A field report submitted by Examiners Diehl and Pitts, dated December 22, 1941, shows that with four exceptions appellant has confined its operations for the last several years to points in New York Harbor (R. 73; see R. 19). In the questionnaire returned with the application, appellant stated that it carried all commodities, but confined to New York Harbor (R. 79).

In an affidavit by James P. McAllister, appellant's vice president and treasurer (R. 88–89), the admission was contained that,

> It is impossible for this company to show any actual records of marine transportation business other than New York harbor and the above described short runs outside, thereof, for a period of 10 years prior to January 1, 1940.
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> * * * * *
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> Other than an occasional tow for a specific customer to points on Long Island Sound, up the Hudson River and Jersey Shore, the records of McAllister indicate

> that for an approximate ten-year period prior to 1940, all of its operations were limited to the confines of New York Harbor. (R. 89.)

Mr. McAllister testified that the company would not be in a position to take any additional business beyond that it is now handling in New York Harbor (R. 155). He testified that business slumped from 1930 until 1937, followed by another slump until 1940 (R. 156). After December 31, 1937, appellant's operations were still limited to New York Harbor (R. 157), and all movements since January 1, 1940, have been between points within New York Harbor (R. 163–164; see also Exhibit 12, R. 209–214).

The witness admitted that water-borne traffic was moving to other points between December 31, 1937, and January 1, 1940, but that the volume of business available was so far below normal that not all carriers could participate in it (R. 164). He repeated that the company was unable to take any tonnage outside of the harbor limits as "today we are running behind all the time in our work" (R. 167). Also, he testified that appellant's rate schedule applies only to New York Harbor (R. 176).

Its petition for further reconsideration (R. 250–259) having been denied by the full Commission on April 10, 1944 (R. 261), appellant on or about September 19, 1944, filed suit in the

United States District Court for the Southern District of New York to set aside the Commission's order (R. 1). The United States and the Commission filed answers (R. 9–12, 22–26), and the cause came on for hearing on April 12, 1945. On July 19, 1945, the court rendered its opinion upholding the validity of the Commission's order (R. 36–43). On August 9, 1945, final decree was entered dismissing appellant's suit (R. 43–44). The petition for appeal was presented and allowed on October 8, 1945 (R. 44–45). On December 10, 1945, this Court noted probable jurisdiction (R. 263).

SUMMARY OF ARGUMENT

I

Appellant's proof does not furnish a basis for a "grandfather" certificate under Section 309 (a) of the Interstate Commerce Act, which establishes January 1, 1940, as the critical date for operations. The Commission found that appellant performed only exempt transportation since 1933. Such transportation, remote from the "grandfather" date or exempt from regulation, furnishes no basis for "grandfather" rights. *Barrett Line* v. *United States,* 326 U. S. 179, 193, 199–200.

The proviso of Section 309 (a), with reference to "interruptions of service over which the applicant * * * had no control," does not help appellant's case. That proviso relates only to

the requirement of continuity since the "grandfather" date and is of no avail to appellant, which was unable to furnish proof of service on the critical date. In any event, even if appellant's failure to operate on that date was the result of an economic depression, the Commission could not issue a certificate. *Gregg Cartage Co.* v. *United States,* 316 U. S. 74.

II

The certificate was also properly denied because appellant failed to show a continuity of service since the "grandfather" date, other than exempt transportation. As in motor carrier cases, Section 309 (a) requires continuity of service since the "grandfather" date. *United States* v. *Maher,* 307 U. S. 148, 155–156; *Alton R. Co.* v. *United States,* 315 U. S. 15, 25. Because appellant voluntarily confined its operations to the performance of exempt transportation within the limits of New York Harbor (see Section 303 (g)) since the "grandfather" date, appellant's application was correctly denied.

The fact that the transportation operations appellant performed were essential war work does not prove that they were performed involuntarily. Moreover, since 1933 appellant has engaged only in exempt transportation. The facts found by the Commission reveal that appellant's failure to engage in *bona fide* operations (other than exempt transportation) since the "grandfather"

date was not due to circumstances over which appellant "had no control" (sec. 309 (a)).

ARGUMENT

I

APPELLANT'S OPERATIONS IN THE REMOTE PAST AFFORD NO BASIS FOR ISSUANCE OF A CERTIFICATE

Part III was added to the Interstate Commerce Act on September 18, 1940 (54 Stat. 929), and brought water carriers within the regulatory jurisdiction of the Interstate Commerce Commission. Part III of the Act was largely patterned after Part II, dealing with the regulation of motor carriers, which had been enacted in 1935.[3] Unlike Part II, however, Part III contains numerous and extensive exemptions from regulation.[4] These exemptions are contained in Section 303 of the Act (49 U. S. C. 903). One species of exempt

[3] In view of this similarity in the legislative purpose and technique, judicial decisions interpreting the motor carrier provisions of the Act are highly persuasive. See S. Rep. No. 433, 76th Cong., 1st sess., p. 4. Such decisions are more numerous than decisions under Part III, inasmuch as Part II has been longer in effect and the carriers to which it is applicable are more numerous than those subject to Part III.

[4] No exemptions of similar commercial importance are contained in Part II. Section 203 (b) of Part II (49 U. S. C. 303 (b)) exempts only school buses, taxicabs, farm and suburban transportation, and other special types of service. The broader exemption provisions in Part III were enacted advisedly, there having been strong opposition to the regulation of water carriers. Hearings, Senate Committee on Interstate Commerce, S. 2009, 76th Cong., 1st sess., pp. 193–277, 291–311, 357–374, 515–538, 661–696.

transportation under this Section of the Act is "transportation in interstate commerce by water solely within the limits of a single harbor."[5]

This Court has held that a water carrier's "grandfather" rights (other than with respect to chartering vessels) must be based on transportation subject to regulation under the Act, and that exempt transportation is to be disregarded. *Barrett Line v. United States*, 326 U. S. 179, 193. The *Barrett Line* case likewise held that past water carrier operations prior to January 1, 1936, might be disregarded as too remote to serve as a basis for "grandfather" rights (*ibid.* 199–200).

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[5] Section 303 (g) of the Act provides:

> Except to the extent that the Commission shall from time to time find, and by order declare, that such application is necessary to carry out the national transportation policy declared in this Act, the provisions of this part shall not apply (1) to transportation in interstate commerce by water solely within the limits of a single harbor or between places in contiguous harbors, when such transportation is not a part of a continuous through movement under a common control, management, or arrangement to or from a place without the limits of any such harbor or harbors, or (2) to transportation by small craft of not more than one hundred tons carrying capacity or not more than one hundred indicated horsepower, or to vessels carrying passengers only and equipped to carry no more than sixteen passengers, or to ferries, or to the movement by water carriers of contractors' equipment employed or to be employed in construction or repair for such water carrier, or to the operation of salvors. (49 U. S. C. 903 (g).)

For descriptions of the effect of this Section, see H. Rep. No. 1217, 76th Cong., 1st sess., p. 21; 86 Cong. Rec. 11768.

Here the Commission found that appellant has performed nothing but exempt transportation since 1933. In this connection the Commission said:

> Since 1933 applicant's operations have been confined primarily to the New York Harbor area. Some towing for other carriers and of bulk commodities has been performed from or to points outside of the harbor area but such operations are not subject to the act. In 1937 machinery, airplanes, guns and parts were carried between New York Harbor, Hudson River and Long Island Sound points but this service has not been repeated. Since January 1, 1940, applicant's fleet has been engaged almost exclusively within New York Harbor in the performance of lighterage and other work essential to the war effort. At the present time its commitments for service within the harbor are so great that it is unable to accept other traffic when offered.
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> * * * * *
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> The evidence of record establishes the fact that applicant for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act, and that it is not holding itself out at the present time to perform such transportation. Obviously the remote operations heretofore described do not establish bona fide operations on January 1, 1940, and since. (R. 20–21.)

Manifestly, the Commission would not have been justified in granting appellant a "grandfather" certificate based on operations performed more than a decade in the past, when Congress has selected January 1, 1940, as the determinative date. Section 309 (a), *supra*, pp. 2–3. To be sure, the Commission is not required to limit its view to transportation performed on a single day, but may consider operations for a reasonable period before January 1, 1940; and in this connection the Commission has adopted a more liberal attitude in the case of water carriers than of motor carriers,[6] because of the difference in the nature of the two types of transportation, and the less frequent service ordinarily rendered by water-borne craft. Nevertheless the Commission is not free to disregard entirely the specific date of Jan-

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[6] *Moran Towing & Transportation Co., Inc., Applications*, 260 I. C. C. 269, 273. The Commission has held that shipments one year before the "grandfather" date are too remote. *Thames River Line, Inc., Common Carrier Application*, 250 I. C. C. 245, 246. Likewise, 1938 and 1937 have been held too remote, as well as 1936. *Tennessee Valley Sand & Gravel Company Common Carrier Application*, 250 I. C. C. 599, 602; *River Sand & Gravel Company Contract Carrier Application*, 250 I. C. C. 370; *Choctaw Transportation Company Contract Carrier Application*, 250 I. C. C. 106, 107. In motor carrier cases the Commission has frequently held that shipments more than a few months prior to June 1, 1935, are too remote to evidence bona fide operations on that date. See, *e. g.*, *Gregg Cartage Co.* v. *United States*, 316 U. S. 74; *Jack Cole Co.* v. *United States*, 41 M. C. C. 657, 59 F. Supp. 10 (N. D. Ala.), affirmed *per curiam*, 324 U. S. 822.

uary 1, 1940, which Congress has prescribed. It would amount to an amendment of the legislation enacted by Congress for the Commission to base "grandfather" rights on operations conducted by appellant more than 10 years ago.

Not only must the Commission disregard operations performed at a remote period in the past, but it must disregard operations which are not of a substantial character. *United States* v. *Carolina Carriers Corporation*, 315 U. S. 475, 480–1. The burden of proof rests upon the applicant. *Alton Railroad Company* v. *United States*, 315 U. S. 15, 25; *Gregg Cartage Co.* v. *United States*, 316 U. S. 74, 83. In view of the Commission's findings that appellant "for a period of over 10 years has performed only an inconsequential amount of transportation of a kind that is now subject to the act" (R. 21), it is clear that appellant's proof fell far short of that necessary in order to obtain a "grandfather" certificate under Section 309 (a) of the Act.

Appellant contends that its failure to operate on January 1, 1940, was due to conditions beyond its control arising from the economic depression of 1930, and the consequent lack of traffic; and that therefore the proviso of Section 309 (a), *supra*, pp. 2–3, with reference to "interruptions of service over which the applicant * * * had no control," becomes applicable.

In the first place, the proviso regarding interruption of service over which the applicant had

no control relates only to the requirement of continuity since the "grandfather" date. Upon the analogy of motor carrier decisions,[7] it is plain that a water carrier in order to obtain "grandfather" rights must prove not only (1) that "such carrier or a predecessor in interest was in bona fide operation as a common carrier on January 1, 1940," but also (2) that such applicant "has so operated since that time" to the date of the Commission's decision on the application, except "as to interruptions of service over which the applicant or its predecessor in interest had no control." Section 309 (a). Hence if, as here, there is no proof of service on the "grandfather" date, the applicant is not entitled to a certificate upon proof that such lack of service was due to circumstances over which applicant had no control. Only if the applicant was in *bona fide* operation on that date, but there was a subsequent interruption of service over which the applicant had no control, does the proviso warrant the Commission in granting a certificate.[8]

[7] See *United States* v. *Maher*, 307 U. S. 148, 155–156; *Alton R. Co.* v. *United States*, 315 U. S. 15, 25; *Gregg Cartage Co.* v. *United States*, 316 U. S. 74, 78; *Turner* v. *United States*, 56 F. Supp. 798 (M. D. N. C.), affirmed *per curiam*, 323 U. S. 674; *Riss & Co.* v. *United States*, 320 U. S. 769.

[8] The words "in either event" in Section 309 (a), *supra*, pp. 2–3, do not refer to operation before and after the "grandfather" date, but refer to ordinary as distinguished from seasonal operation. This is made clear by reference to the

Secondly, even if it be assumed, as appellant contends, that its failure to operate on January 1, 1940, was the result of an economic depression, the Commission would nevertheless, as a matter of law, lack power to issue a certificate to appellant in reliance upon the provision in Section 309 (a) with respect to "interruptions of service over which the applicant * * * had no control." This follows as a result of this Court's decision in *Gregg Cartage Co.* v. *United States*, 316 U. S. 74, that bankruptcy is not to be deemed an interruption of service over which a carrier has no control. Interruptions of service owing to floods, snow, unsafe or impassable roads, highway construction, droughts which destroy a carrier's chief source of business, ill health, strikes,

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analogous words "in either instance" in Section 206 (a) of Part II of the Act (49 U. S. C. 306 (a)), which provides:

> *Provided, however*, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation * * *

See Omnibus Transportation Legislation, House Committee Print, 76th Cong., 3d sess., p. 60.

or the illegal acts of governmental authorities constitute grounds for holding that an interruption of service is beyond an applicant's "control" (see 316 U. S. at pp. 85–86, notes 1–9).* However, since bankruptcy itself is not to be deemed an interruption of service over which a carrier has no control, it would seem that *a fortiori* the avoidance of bankruptcy by prudent retrenchment of the scope of appellant's water carrier operations, following the economic de-

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*Suspension of service in compliance with an order issued by the Office of Defense Transportation was held by the Commission to be an interruption over which applicant had no control in *Great Lakes Transit Corporation Applications*, 260 I. C. C. 9, 10. Moreover, the taking of vessels by the Government for use in the prosecution of the war has been repeatedly held to be an interruption of service beyond the control of applicant. *American-Hawaiian Steamship Company Common Carrier Application*, 250 I. C. C. 219, cited by appellant (appellant's brief in opposition, pp. 6–7). See also 250 I. C. C. 317, 319; 359, 362; 457, 462; 469, 472; 477, 479; 510, 511; 260 I. C. C. 23, 24; 74, 77; 232, 233. However, interruption of service because of a sale of vessels to the British Government was held not beyond the control of applicant. *Lykes-Coastwise Line, Inc., Applications*, 260 I. C. C. 201, 204. Moreover, voluntary discontinuance of service to a particular port is within applicant's control. *Agwilines, Inc., Common Carrier Application*, 250 I. C. C. 339, 340. The Commission has repeatedly held that loss of traffic or failure to secure profitable business are not sufficient reasons for failure to operate. *Riddle Common Carrier Application*, 22 M. C. C. 204, 206; *McFarland & Stample Trucking Company, Purchase*, 36 M. C. C. 459, 461; *Hagerstown Storage & Transfer Application*, 32 M. C. C. 409, 413. The Commission's interpretation of the statute it administers is entitled to great weight. *United States* v. *American Trucking Associations*, 310 U. S. 534, 549.

pression of 1930, must also be regarded as a voluntary course of conduct, within appellant's control, and dictated by appellant's sound business judgment. Accordingly, appellant's cessation of operations (other than exempt transportation in New York Harbor) cannot be deemed an interruption of service over which appellant "had *no* control" (italics those of the Court, 316 U. S. at p. 82).

Appellant seeks to escape the effect of the *Gregg Cartage Co.* decision by showing that there the carrier took the initiative in instituting receivership proceedings, and managed its affairs in a manner likely to provoke the filing of a petition in bankruptcy by creditors (316 U. S. at p. 81). However, the *Gregg Cartage Co.* decision was not based upon the narrow ground that the carrier itself took the first step in connection with the judicial proceedings leading to its liquidation. The decision was rested upon the broad ground that the carrier's adverse financial condition was due to circumstances over which it could not be said that the carrier had no control, namely, the choice of an insurance company which became insolvent, and the negligent operation of vehicles leading to claims for personal injuries and property damage (316 U. S. at pp. 81–82). Appellant here is contending for the same rule which was unsuccessfully urged in the *Gregg Cartage Co.* case, that "the Commission must trace out the chain of causation" and weigh the carrier's judg-

ment "against the pressures of circumstance" (316 U. S. at p. 79). The dissenters in the *Gregg Cartage Co.* case similarly understood the rule adopted by the majority of the Court to be applicable in the event of "misfortunes of a purely accidental character which affect financial stability" (316 U. S. at p. 86).

Whether a particular carrier should seek to withstand the effects of a depression by curtailing the geographical area to be served by it (rather than seeking larger volume and lower unit costs by expanding its business and seeking wider markets) is obviously a question of business judgment and managerial discretion. The exercise of such judgment and discretion cannot be treated as an event over which the carrier "had no control" (sec. 309 (a)).

The effect of the depression does not become pertinent here, as it was in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 284 U. S. 248, where the level of rates was in issue, and the effect of the depression upon the revenues of the carriers was significant. Here the depression furnished the occasion for exercise of business judgment by appellant, and the impact of economic conditions upon appellant's revenues is not an issue for consideration by the Commission in order to decide the matter before it. Moreover, the *Atchison* case was an exceptional decision, standing upon its own particular facts, and has never been followed.

Interstate Commerce Commission v. *Jersey City*, 322 U. S. 503, 515.

As we have shown, the Commission's action here was correct as a matter of law, under the *Gregg Cartage Co.* decision. It was therefore not necessary for the Commission to make a finding whether or not the interruption in service before January 1, 1940, was beyond the control of petitioner. Such a finding would have been immaterial, for it would have been in substance a conclusion of law; and under the *Gregg Cartage Co.* decision the Commission was precluded, as a matter of law, from reaching a determination favorable to appellant on that issue. Even if the Commission had explicitly found as a fact that the applicant's cessation of service had been due to adverse economic conditions attendant upon the depression, under the *Gregg Cartage Co.* rule, it could not have proceeded to make the further ultimate finding desired by appellant, *viz.*, that such an interruption of service was one over which the appellant "had no control."

Appellees submit that the district court could with propriety have gone further than it did (see *infra*, p. 22), and could have upheld the Commission's denial of appellant's application upon the ground that appellant had failed to prove *bona fide* operation as a water carrier on January 1, 1940. Appellant's substantial and world-wide operations as a water carrier at a remote period in the past were insufficient to afford any basis for

the issuance by the Commission of a certificate under the "grandfather" clause of Section 309 (a) of the Act.

II

APPELLANT'S FAILURE TO CONTINUE ANY OPERATIONS SINCE THE "GRANDFATHER" DATE, OTHER THAN EXEMPT TRANSPORTATION, PRECLUDES ISSUANCE OF A CERTIFICATE

In any event, the Commission's order must be upheld for the reasons given in the district court's opinion. The district court placed its decision upon a wholly unassailable ground, *viz.*, lack of continuity of service following the "grandfather" date of January 1, 1940. With regard to that period of time, the findings of fact made by the Commission are definite and uncontroverted.

In that connection the district court said (R. 42–43):

> Decision, however, does not depend entirely upon what the petitioner or its predecessors did or failed to do on or before January 1, 1940. The statute requires as a condition precedent to the granting of a "grandfather" certificate, where proof is not made of bona fide operation on January 1, 1940, and since that date, a showing that the interruption of service on and after the critical date was for causes not within the control of the petitioner or its predecessors. There was no proof whatever of subsequent operation and the Commission found both that the applicant "is not holding itself out

at the present time to perform such transportation" and that it "has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor." This makes unimportant any deficiency in the findings as to the interruption of service before January 1, 1940. We think the Commission's findings above quoted necessarily imply that the petitioner's failure to resume the interrupted service after January 1, 1940, was not due to causes beyond its control. Its only excuse for failing to perform such service during the subsequent period is that after the outbreak of World War II all its facilities were required for service in New York Harbor and that after this country was attacked they would have been requisitioned by the government for such use had the petitioner not devoted them voluntarily to that purpose.

Whether or not that is so, however, is problematical, and the fact that the petitioner made no attempt to resume the service for which the "grandfather" certificate is now sought leaves in the realm of pure speculation what the effect of such an attempt might have been by way of any requisition by the government. We feel bound to give effect to the findings made by the Commission, and when that is done, the petitioner is left short of proof and findings necessary to entitle it to a reversal of

> the order denying its application for a certificate. The informed judgment of the Commission must be given effect when based on findings which are supported by the evidence. *Mississippi Valley Barge Co.* v. *United States,* 292 U. S. 282.

Unquestionably, in a water carrier application, just as in a motor carrier case, continuity of service since the "grandfather" date is essential and must be proved before an applicant is entitled to a certificate. *United States* v. *Maher,* 307 U. S. 148, 155–156; *Alton R. Co.* v. *United States,* 315 U. S. 15, 25; *Gregg Cartage Co.* v. *United States,* 316 U. S. 74, 78; *Turner* v. *United States,* 56 F. Supp. 798 (M. D. N. C.), affirmed *per curiam,* 323 U. S. 674; *Riss & Co.* v. *United States,* 320 U. S. 709.

In the light of this requirement of continuity, together with the rule that exempt transportation is to be disregarded as a basis for issuance of a "grandfather" certificate (*Barrett Line* v. *United States,* 326 U. S. 179, 193), it seems plain that appellant's application was properly denied. The Commission's findings clearly show that following the "grandfather" date of January 1, 1940, appellant has voluntarily confined its operations to the performance of exempt transportation within the limits of New York Harbor (R. 20–21).

Appellant urges that its failure to render any transportation service, other than such exempt

transportation, is an interruption of service over which it "had no control" under the proviso of Section 309 (a) inasmuch as the exempt transportation performed by appellant was work essential to the war effort. However, the fact that the transportation operations appellant performed were essential war work does not prove that they were performed involuntarily instead of as the result of appellant's choice. Much war work was done by companies which found it profitable as well as patriotic to engage in such essential activities; they did so voluntarily and without compulsion by public authority; their participation in the war effort was not a matter over which they "had no control." The same is true of appellant. Moreover, there is no warrant for assuming that only in New York Harbor could essential war work be done. Doubtless much transportation which is not exempt from regulation under the Act was equally indispensable and requisite in furtherance of the war effort. If appellant had been furnishing such essential non-exempt transportation outside New York Harbor, it would have been able to claim "grandfather" rights on the basis of such service. But when appellant voluntarily chose to confine its water carrier operations to the furnishing of exempt transportation in the harbor area, its rights cannot be augmented merely because the service rendered happened to be essential war work.

Furthermore, the invalidity of appellant's claim that the restricted scope of its service is due to wartime compulsion is clearly shown by the fact that long before the outbreak of the war, indeed ever since 1933, its substantial operations have been confined to the New York Harbor area (R. 20–21), and hence have constituted an exempt transportation service which cannot be the basis of a "grandfather" certificate.

As the district court points out (R. 42), it is entirely problematical and speculative whether the Government would or would not have requisitioned appellant's facilities for service in New York Harbor had the appellant not devoted them voluntarily to that purpose.

Admittedly, appellant's facilities were neither requisitioned nor "requested" by the Government.[10] It cannot be contended that appellant's decision to abstain from other transportation service than the exempt operation in New York Harbor was not its own voluntary act and deed. Consequently appellant's failure to engage in *bona fide* operations (other than exempt transportation) since the "grandfather" date was not a circumstance over which appellant "had no control."

Without a certificate, appellant may, of course, continue to engage in exempt transportation. Upon proof of public convenience and necessity

[10] See note 9, *supra*, p. 18.

under Section 309 (c), appellant may secure a certificate authorizing it to engage in non-exempt transportation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

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FEBRUARY 1946.

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SUPREME COURT OF THE UNITED STATES.

No. 616.—October Term, 1945.

McAllister Lighterage Line, Inc., Appellant, *vs.* United States of America and Interstate Commerce Commission.	On Appeal from the District Court of the United States for the Southern District of New York.

[March 25, 1946.]

Mr. Justice Murphy delivered the opinion of the Court.

The appellant applied to the Interstate Commerce Commission for a certificate as a common carrier by water under the "grandfather" clause of Section 309(a) of Part III of the Interstate Commerce Act.[1] The authority sought was to continue a transportation service by tug and barge which appellant had performed at one time over routes along the Atlantic seaboard and certain inland waterways. The application was denied by the Commission. A specially-constituted District Court upheld the Commission's order, dismissing appellant's suit to set the order aside. The case comes to us by direct appeal from the District Court.

Under Section 309(a) appellant was entitled to a certificate without proof of public convenience or necessity if it could demonstrate that it or its predecessor in interest "was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control."

The undisputed evidence submitted to the Commission revealed that appellant or its predecessors have been engaged in marine transportation since 1864 and that the business has been continuously owned by its founder or his descendants through four generations. Past activities have been extensive and varied and have

[1] 49 U. S. C. § 909(a).

included the freight services forming the subject matter of the application in issue.

Appellant conceded before the Commission, however, that from 1933 through 1939 its freight operations virtually ceased[2] and that its activities were confined primarily to operations in the New York harbor area which were of a type exempt from regulation under the Interstate Commerce Act.[3] Appellant claimed that it had bent every effort during these years to obtain freight customers and that the paucity of its operations resulted solely from the severe economic depression which prevailed during that period. It was argued that this interruption in freight service prior to January 1, 1940, was due to factors beyond appellant's control within the meaning of the proviso of Section 309(a), preventing a forfeiture of its "grandfather" rights.

Since January 1, 1940, appellant's fleet has been engaged almost exclusively within the New York harbor in the performance of lighterage and other work essential to the war effort. So great were its commitments for service within the harbor that it has been unable to accept other traffic when offered. Appellant's claim was that this diversion of its vessels to war work after January 1, 1940, was also an interruption in regular service beyond its control, further preventing a forfeiture of "grandfather" rights under Section 309(a).

Appellant thus admitted before the Commission that it was not entitled to a certificate under the "grandfather" clause unless the business depression and the war service constituted complete and involuntary interruptions in its regular freight service, thereby bringing the proviso of Section 309(a) into operation. After reviewing the evidence, the Commission made the following conclusions: "The evidence of record establishes the fact that applicant for a period of over ten years has performed only an inconsequential amount of transportation of a kind that is now subject to the act and that it is not holding itself out at the present time to perform such transportation. Obviously the remote operations

[2] In 1937 machinery, airplanes, guns and parts were carried between New York harbor, Hudson River and Long Island Sound points but this service has not been repeated.

[3] Under Section 303(g) of the Act, transportation in interstate commerce by water solely within the limits of a single harbor is exempt from regulations under the Act, unless the Commission finds that the national transportation policy requires regulation.

heretofore described do not establish bona fide operations on January 1, 1940, and since. Furthermore, applicant has considerable facilities available at the present time, the use of which it voluntarily has confined to exempt transportation within the limits of New York Harbor. We affirm the conclusion of the prior report that applicant has not established that it is entitled to 'grandfather' rights."

The District Court held that the Commission failed to make sufficiently definite findings that the interruption in service on or prior to January 1, 1940, either was or was not beyond the control of appellant and its predecessors. The Commission merely found the admitted fact that appellant did not perform a sufficient amount of bona fide operations on or prior to the crucial date. The District Court felt that if that finding were the sole basis of the Commission's action, there would be merit to appellant's contention that the case should be remanded to the Commission for a clarification of its findings. But this assumes that the proviso of Section 309 (a) regarding interruption of service over which the applicant had no control relates to the service "on January 1, 1940," as well as to the service subsequent to that date. The Government contends, however, that the proviso refers only to the latter service and that if there is no proof of service on the "grandfather" date the applicant is not entitled to a certificate upon proof that such lack of service was due to circumstances beyond the applicant's control. Under this view the Commission's failure to make adequate findings as to interruption of service prior to January 1, 1940, becomes immaterial.

We deem it unnecessary at this time, however, to settle this problem of statutory construction, it being clear in any event that the proviso is applicable to interruptions after January 1, 1940. Failure to prove that such an interruption was beyond the applicant's control leads to a forfeiture of "grandfather" rights. As to that issue we agree with the District Court that the Commission made adequate findings that appellant failed to show continuity of service subsequent to January 1, 1940, and that there was no recognizable excuse for the lack of service. The Commission expressly found that appellant "is not holding itself out at the present time to perform such transportation" and that it "has considerable facilities available at the present time, the use of which it voluntarily has confined to ex-

empt transportation within the limits of New York Harbor." This clearly means that, in the Commission's view, the war emergency did not compel appellant to restrict its activities to exempt operations in the harbor area, thereby making the proviso of Section 309(a) inapplicable. That conclusion, we believe, is amply supported by the evidence and contravenes no statutory rule.

There was no evidence before the Commission that appellant's war work was other than voluntary in character. Appellant conceded the lack of any governmental order restricting its activities solely to the New York harbor area or prohibiting it from operating over the routes it now seeks to ply.[4] The major claim, without supporting evidence, was that the traffic in the New York harbor was so great during the war as to necessitate intensive utilization of every available tug, barge, lighter and scow in the movement of war cargoes. It was also alleged without proof that the Office of Defense Transportation beyond "the slightest doubt" would have frustrated any attempt by appellant to utilize a substantial portion of its fleet in freight service along the Atlantic coast and, if necessary, would have requested the War Shipping Administration to requisition appellant's vessels.[5] The speculative and insubstantial nature of these unsupported claims is obvious. They rest upon the questionable assumption that essential war work could be done only in the New York harbor and that there was no essential transportation service along the Atlantic coast or inland waterways in which appellant could have participated. They require one to guess what action governmental agencies would have taken under hypothetical situations. We do not imply, of course, that such claims are untrue or that

[4] Cf. American-Hawaiian Steamship Company Common Carrier Application, 250 I. C. C. 214, 222; Bull Steamship Line Common Carrier Application, 250 I. C. C. 317, 313; Isthmian Steamship Company Common Carrier Application, 250 I. C. C. 359, 362; Southern Pacific Company Common Carrier Application, 250 I. C. C. 457, 462; Coast Transportation Co., Inc., Common and Contract Carrier Application, 250 I. C. C. 469, 472; Weyerhaeuser Steamship Co. Common Carrier Application, 250 I. C. C. 477, 479; American Range Lines, Inc., Contract Carrier Application, 250 I. C. C. 510, 511; Great Lakes Transit Corporation Applications, 260 I. C. C. 9, 10; Providence Steamboat Company Contract Carrier Application, 260 I. C. C. 23, 24; St. Johns River Line Co. Common Carrier Application, 260 I. C. C. 74, 77; Nicholson Transit Co. Contract Carrier Application, 260 I. C. C. 232, 233.

[5] Appellant pointed out that the Government exerted control over all domestic shipping during the war. The Office of Defense Transportation, for example confined barge movements along the Atlantic coast largely to the movement of coal.

proved, they might not adequately support appellant's position. But there is nothing in this record to substantiate the claims. Certainly an administrative order should be grounded upon something more definite and substantial than the surmises offered by appellant.

Appellant's activities had been confined to the New York harbor area since 1933, long before the outbreak of the war. In the absence of any attempt to expand the activities and in the absence of proof of any governmental restriction, it was reasonable to find that appellant voluntarily chose to continue its activities on a limited scale. Such a choice may well have been dictated by considerations of profit and convenience. That these limited activities coincided with war time needs does not necessarily prove that they were other than voluntary in nature. Much activity in recent years furthered the war effort although it was profitable and although it was done without compulsion by public authority.

The Commission was therefore justified in concluding that appellant's failure to engage in bona fide operations since January 1, 1940, was due to circumstances other than those over which appellant had no control. Appellant accordingly forfeited whatever "grandfather" rights it might have had.

Affirmed.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE dissent.

Mr. Justice JACKSON took no part in the consideration or decision of this case.